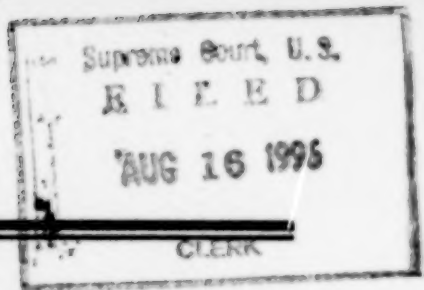


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No. 95-1717



In the Supreme Court of the United States

OCTOBER TERM, 1995

UNITED STATES OF AMERICA, PETITIONER

v.

DAVID W. LANIER

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOINT APPENDIX

WALTER DELLINGER *
Acting Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 514-2217
Counsel for Petitioner

ALFRED H. KNIGHT *
WILLIS & KNIGHT
215 Second Avenue, North
Nashville, Tenn. 37201
(615) 259-9600
Counsel for Respondent

* Counsel of Record

PETITION FOR A WRIT OF CERTIORARI FILED APRIL 22, 1996
CERTIORARI GRANTED JUNE 17, 1996

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NOTICE

The following items have been omitted in printing this appendix because they appear on the following pages in the printed appendix to the petition for a writ of certiorari:

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

Docket No. 92-20172

UNITED STATES OF AMERICA, PLAINTIFF

vs.

DAVID W. LANIER, DEFENDANT

RELEVANT DOCKET ENTRIES

| DATE | No. | PROCEEDINGS |
|---------|-----|--|
| 5-20-92 | 1 | INDICTMENT |
| 8-24-92 | 21b | MOTION TO DISMISS BECAUSE THE STATUTE UNDER WHICH DEFENDANT IS INDICTED IS UNCONSTITUTIONALLY VOID FOR VAGUENESS AND BRIEF OF LAW IN SUPPORT |
| 9-1-92 | 31 | GOVERNMENT'S RESPONSE IN OPPOSITION TO DEFENDENT'S MOTION TO DISMISS THIS INDICTMENT CHJTU |
| 10-1-92 | 45 | <i>MINUTES: PENDING MOTIONS:</i> Moskowitz, Parker and Spain for govt., Emmons for deft. Court took under advisement motion to dismiss because statute of indictment is unconstitutionally void for vagueness and Motion to Dismiss indictment for outrageous governmental conduct. The Court denied motion to sever count 10 or reduce it to a misdemeanor and motion to suppress. The motion as to tapes was resolved. |

| DATE | No. | PROCEEDINGS |
|----------|-----|---|
| 10-5-92 | 46 | SUPPLEMENTAL RESPONSE TO DEFENDANT'S MOTION TO DISMISS INDICTMENT BECAUSE ITS VOID FOR VAGUENESS CHJTU |
| 11-2-92 | 55 | ORDER ON PENDING MOTIONS CHJTU, USA, USM, USP, PTS, OB, mailed Emmons |
| 11-30-92 | 77 | <i>MINUTES: JURY TRIAL BEGAN:</i> Parker and Spain for govt., Emmons and Naifeh for deft. Our of presence of jury. Timothy Naifeh introduced to assist Emmons. Judge Lanier to sit at table with counsel and be referred to as Judge [during] the course of the trial. Emmons not to refer to being former District Atty or Church of Christ Minister. Parker not to point to defendant angrily, but may, one time during closing arguments. Court DENIED Emmons' Third Motion for Continuance. Motion of Change of Venue DENIED. ¹ Court DENIED Emmons' objections to late notice of expert notice. Prospective juror, Tommy Anderson, was sworn, asked about talking to other jurors that he knew defendant and they had married twin sisters. He was excused from this case. <i>Filed in open court:</i> Unsigned letter to Judge Turner. Motions for outrageous conduct and to prohibit prior sexual conduct of prospective witnesses will be heard at appropriate time. Court GRANTED Emmons' Motion to Individually voir dire jurors out of presence of other jurors because of the personal nature of some questions. 59 prospective jurors previously sworn were brought into the courtroom. <i>Jury selection</i> began. Voir dire by the Court. Individual voir dire of jurors out of presence of other jurors. Jury selection to resume tomorrow at 9:30 a.m. |

| DATE | No. | PROCEEDINGS |
|----------|-----|--|
| 12-15-92 | 94 | <i>MINUTES: JURY TRIAL RESUMED:</i> Parker, Spain and Moskowitz for govt., Emmons for deft. Emmons renewed his motion for judgment of acquittal. Arguments of counsel were presented. The Court granted the motion for judgment of acquittal as to count 9, but denied it as to the other counts. Discussion of jury charge. Jurors brought in and closing arguments were presented. Court adjourned to resume with jury deliberations Wed-12-16-92-9:30 a.m. |
| 12-16-92 | 95 | <i>MINUTES: JURY TRIAL RESUMED:</i> Parker, Spain and Moskowitz for govt., Emmons and Naifeh for deft. Juror #7 asked the Court to be excused for personal reasons. Ms. Terrell stated two reasons. The govt objected to excuse the jurors and the defense moved that the juror be excused. The Court DENIED the defense motion. Objections were brought before the Court on behalf of defense counsel and the govt responded. Jurors brought into the courtroom. The Charge was given. Alternate jurors excused. Recess. Note from the jury. Motion for Mistrial: Defense called (4) witnesses. Motion DENIED. Note from jury. Exhibits given to jurors except of exhibits marked ID only, two cassette tapes and video tape. Jurors brought into court and charge-page 24 was re-read. Jurors resumed deliberations. |
| 12-18-92 | 99 | VERDICT (counts 2, 4, 5, 6, 7, 8, & 11—GUILTY, counts 1, 3, & 10 NOT GUILTY) |
| 12-18-92 | 100 | VERDICT (count 6—ANSWERED YES) |
| 12-18-92 | 101 | VERDICT (count 7—ANSWERED YES) |
| 12-24-92 | 104 | MOTION OF DEFENDANT, DAVID W. LANIER, FOR A NEW TRIAL CHJTU |

| DATE | No. | PROCEEDINGS |
|----------|------|---|
| 12-28-92 | 105 | AMENDED MOTION FOR NEW TRIAL CHJTU |
| 12-18-92 | *108 | MINUTES: JURY TRIAL RESUMED: Parker, Moskowitz & Spain for govt., Emmons for deft. Answer to Jury's note re coercion. Jury returned with following verdict: Not guilty to counts 1, 3 & 10. Guilty to counts 2, 4, 5, 6, 7, 8 and 11. Special Interrogatories for counts 6 & 7 answered—YES. Special Interrogatory as to count 10 was not considered—due to not guilty verdict. Jurors polled individually. Dips SET for <i>Fri-3-26-93-9:30 a.m</i> (minutes received and stamp filed 12-29-92) |
| 4-19-93 | 158 | JUDGMENT IN A CRIMINAL CASE per minutes of 4-12-93. Copy to Case Manager for distribution. Original to file. |

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

Cr. No. _____
18 U.S.C. § 242

UNITED STATES OF AMERICA, PLAINTIFF

vs.

DAVID W. LANIER, DEFENDANT

INDICTMENT

THE GRAND JURY CHARGES:

INTRODUCTION

1. David W. Lanier is the only chancellor for the Twenty-Ninth Judicial District for Dyer and Lake Counties in the State of Tennessee.

2. As the only chancellor for the Twenty-Ninth Judicial District, David W. Lanier handles all cases in Dyer and Lake Counties including divorce petitions, child custody proceedings, child support matters, appointment and removal of guardians, and adoptions.

3. David W. Lanier also acts as the only Juvenile Court judge in Dyer and Lake County. As such, David W. Lanier has jurisdiction over all Juvenile Court matters in those counties.

4. All Juvenile Court employees, including secretaries and juvenile officers, serve at the pleasure of David W.

Lanier. In addition, all clerical employees of the Chancery Court, including court secretaries and clerks, serve at the pleasure of David W. Lanier. These employees can be hired, promoted, disciplined, or fired at the will of David W. Lanier.

COUNT 1

On or about July 12, 1988, in the Western District of Tennessee

DAVID W. LANIER

while acting under color of law of the State of Tennessee, did wilfully subject Patricia Wallace, an inhabitant of the State of Tennessee, and an employee of the Circuit Court of Dyer County, to the deprivation of rights and privileges which are secured and protected by the Constitution, and the laws of the United States, namely, the right not to be deprived of liberty without due process of law, including the right to be free from wilfull sexual assault, that is, by wilfully touching Patricia Wallace on and near her crotch and otherwise molesting her, all in violation of Title 18, United States Code, Section 242.

[nmt 1 yr. or \$100,000.00, or both; and if bodily injury results, nmt 10 yrs. or \$250,000 or both, together with a mandatory special assessment of \$50. See 18 U.S.C. Section 3013(a)].

COUNT 2

In or about May through August, 1989, in the Western District of Tennessee,

DAVID W. LANIER

while acting under color of law of the State of Tennessee, did wilfully subject Sandra Sanders, an inhabitant of the State of Tennessee and an employee of the Dyer County Juvenile Court, to the deprivation of the rights and privileges which are secured and protected by the Constitution

and the laws of the United States, namely the right not to be deprived of liberty without due process of law, including the right to be free from wilfull sexual assault, that is by wilfully grabbing the breasts of Sandra Sanders and otherwise molesting her, all in violation of Title 18, United States Code, Section 242.

[nmt 1 yr. or \$100,000.00, or both; and if bodily injury results, nmt 10 yrs. or \$250,000.00 or both, together with a mandatory special assessment of \$50. See 18 U.S.C. Section 3013(a)].

COUNT 3

In or about May through August, 1989, in the Western District of Tennessee,

DAVID W. LANIER

while acting under color of law of the State of Tennessee, did wilfully subject Sandra Sanders, an inhabitant of the State of Tennessee and an employee of the Dyer County Juvenile Court, to the deprivation of the rights and privileges which are secured and protected by the Constitution and the laws of the United States, namely the right not to be deprived of liberty without due process of law, including the right to be free from wilfull sexual assault, that is by wilfully grabbing the buttocks of Sandra Sanders and otherwise molesting her, all in violation of Title 18, United States Code, Section 242.

[nmt 1 yr. or \$100,000.00, or both; and if bodily injury results, nmt 10 yrs. or \$250,000.00 or both, together with a mandatory special assessment of \$50. See U.S.C. Section 3013(a)].

COUNT 4

In or about September or October, 1990, in the Western District of Tennessee,

DAVID W. LANIER

while acting under color of law of the State of Tennessee, did wilfully subject Patty Mahoney, an inhabitant of the State of Tennessee and an employee of the Chancery Court of Dyer County, to the deprivation of the rights and privileges which are secured and protected by the Constitution and the laws of the United States, namely the right not to be deprived of liberty without due process of law, including the right to be free from wilfull sexual assault, that is by wilfully grabbing the breasts and buttocks of Patty Mahoney and otherwise molesting her, all in violation of Title 18, United States Code, Section 242.

[nmt 1 yr. or \$100,000.00, or both; and if bodily injury results, nmt 10 yrs. or \$250,000.00 or both, together with a mandatory special assessment of \$50. See 18 U.S.C. Section 3013(a)].

COUNT 5

In or about September or October, 1990, in the Western District of Tennessee,

DAVID W. LANIER

while acting under color of law of the State of Tennessee, did wilfully subject Patty Mahoney, an inhabitant of the State of Tennessee and an employee of the Chancery Court of Dyer County, to the deprivation of the rights and privileges which are secured and protected by the Constitution and the laws of the United States, namely the right not to be deprived of liberty without due process of law, including the right to be free from wilfull sexual assault, that is by wilfully touching his pelvis to the body of Patty Mahoney and otherwise molesting her, all in violation of Title 18, United States Code, Section 242.

[nmt 1 yr. or \$100,000.00, or both; and if bodily injury results, nmt 10 yrs. or \$250,000.00 or both,

together with a mandatory special assessment of \$50. See 18 U.S.C. Section 3013(a)].

COUNT 6

In or about September, 1990, in the Western District of Tennessee,

DAVID W. LANIER

while acting under color of law of the State of Tennessee, did wilfully subject Vivian Archie, an inhabitant of the State of Tennessee, to the deprivation of the rights and privileges which are secured and protected by the Constitution and the laws of the United States, namely the right not to be deprived of the liberty without due process of law, including the right to be free from wilfull sexual assault, that is by wilfully coercing Vivian Archie to engage in sexual acts with defendant Lanier, resulting in bodily injury to Vivian Archie, all in violation of Title 18, United States Code, Section 242.

[nmt 1 yr. or \$100,000.00, or both; and if bodily injury results, nmt 10 yrs. or \$250,000.00 or both, together with a mandatory special assessment of \$50. See 18 U.S.C. Section 3013(a)].

COUNT 7

In or about October, 1990, in the Western District of Tennessee,

DAVID W. LANIER

while acting under color of law of the State of Tennessee, did wilfully subject Vivian Archie, an inhabitant of the State of Tennessee, to the deprivation of the rights and privileges which are secured and protected by the Constitution and the laws of the United States, namely the right not to be deprived of liberty without due process of law, including the right to be free from wilful sexual assault, that is by wilfully coercing Vivian Archie to en-

gage in sexual acts with defendant Lanier, resulting in bodily injury to Vivian Archie, all in violation of Title 18, United States Code, Section 242.

[nmt 1 yr. or \$100,000.00, or both; and if bodily injury results, nmt 10 yrs. or \$250,000.00 or both, together with a mandatory special assessment of \$50. See 18 U.S.C. Section 3013(a)].

COUNT 8

In or about February through May, 1991, in the Western District of Tennessee,

DAVID W. LANIER

while acting under color of law of the State of Tennessee, did wilfully subject Sandy Attaway, an inhabitant of the State of Tennessee and an employee of the Chancery Court of Dyer County, to the deprivation of the rights and privileges which are secured and protected by the Constitution and the laws of the United States, namely the right not to be deprived of liberty without due process of law, including the right to be free from wilfull sexual assault, that is by wilfully touching his pelvis to the buttocks of Sandy Attaway and otherwise molesting her, all in violation of Title 18, United States Code, Section 242.

[nmt 1 yr. or \$100,000.00, or both; and if bodily injury results, nmt 10 yrs. or \$250,000.00 or both, together with a mandatory special assessment of \$50. See 18 U.S.C. Section 3013(a)].

COUNT 9

In or about February or March, 1991, in the Western District of Tennessee,

DAVID W. LANIER

while acting under color of law of the State of Tennessee, did wilfully subject Ruby Sipes, an inhabitant of the State of Tennessee, to the deprivation of the rights and privileges which are secured and protected by the Constitution and the laws of the United States, namely the right not to be deprived of liberty without due process of law, including the right to an unbiased tribunal and the right to be free from wilfull sexual assault, that is by wilfully exposing his genitals to Ruby Sipes and urging her to engage in sexual acts with him, all in violation of Title 18, United States Code, Section 242.

[nmt 1 yr. or \$100,000.00, or both; and if bodily injury results, nmt 10 yrs. or \$250,000.00 or both, together with a mandatory special assessment of \$50. See 18 U.S.C. Section 3013(a)].

COUNT 10

In or about April, 1991, in the Western District of Tennessee,

DAVID W. LANIER

while acting under color of law of the State of Tennessee, did wilfully subject Lisa Couch, an inhabitant of the State of Tennessee, to the deprivation of the rights and privileges which are secured and protected by the Constitution and the laws of the United States, namely the right not to be deprived of liberty without due process of law, including the right to be free from wilfull sexual assault, that is by wilfully coercing Lisa Couch to engage in sexual acts with him, resulting in bodily injury to Lisa Couch, all in violation of Title 18, United States Code, Section 242.

[nmt 1 yr. or \$100,000.00, or both; and if bodily injury results, nmt 10 yrs. or \$250,000.00 or both, together with a mandatory special assessment of \$50. See 18 U.S.C. Section 3013(a)].

COUNT 11

On or about September 18, 1991, in the Western District of Tennessee,

DAVID W. LANIER

while acting under color of law of the State of Tennessee, did wilfully subject Fonda Bandy, an inhabitant of the State of Tennessee, to the deprivation of the rights and privileges which are secured and protected by the Constitution and the laws of the United States, namely the right not to be deprived of liberty without due process of law, including the right to be free from wilfull sexual assault, that is by wilfully grabbing the breasts and crotch of Fonda Bandy and otherwise molesting her, all in violation of Title 18, United States Code, Section 242.

[nmt 1 yr. or \$100,000.00, or both; and if bodily injury results, nmt 10 yrs. or \$250,000.00 or both, together with a mandatory special assessment of \$50. See 18 U.S.C. Section 3013(a)].

A TRUE BILL:

Foreman

Date: _____

Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

[Caption Omitted]

TRIAL TRANSCRIPT

(December 2, 1992)

* * * * *

[Testimony of Sandra Sanders]

[118] [Ms. Spain:] Q. Where do you work in the county?

[Ms. Sanders]: A. I work for Dyer County Juvenile Court.

Q. How long have you worked there?

A. Going on four years.

Q. What is your position at the Juvenile Court?

A. I'm Youth Service Officer.

Q. And what do you do as Youth Service Officer?

A. As Youth Service Officer, we prepare children for court, we supervise children on probation. We make referrals to agencies for children that are on drugs, maybe, or having behavioral problems. It's just a lot of different things that we do.

Q. Who is your boss in that position?

A. Judge David W. Lanier.

Q. Do you see Judge Lanier in the courtroom?

A. Yes, I do.

Q. Did you interview with Judge Lanier for that position?

A. Yes, I did.

Q. How did you come to be interviewed for your job?

[119] A. I heard about the job from one of his previous employees.

Q. Did you apply for the job?

A. Yes, I did.

Q. Did you eventually interview for that job?

A. Yes, I did.

Q. Who did you interview with?

A. Judge Lanier.

Q. Did you consider yourself qualified for the Youth Services Offices position?

A. Yes, I do.

Q. Why is that?

A. I have two years in criminal justice which is ninety-six hours and the job required 84 to 86, as well as I remember.

Q. When you interviewed with Judge Lanier, did you ever say that it was his sole decision whether you got hired for that position?

A. Yes.

Q. Okay. Is he the Chancellor in Dyersburg?

A. That's correct.

Q. What type cases did you understand he was dealing with as Chancellor?

A. He hears divorce cases, child custody cases, child support cases. He hears workmen's compensation cases in [120] Chancery Court.

Q. Is he also the juvenile judge in Dyersburg?

A. That's correct.

Q. And, therefore, he deals with the juvenile matters that you are involved with?

A. Yes, he does.

Q. Was he the only chancellor in Dyersburg?

A. Yes, he is.

Q. And, therefore, is he also the Chancellor for Dyer County and the only Chancellor in Dyer County?

A. Yes, he is.

Q. If you could, Ms. Sanders, tell the jury about your interview for the Youth Services Officer.

A. Well, the interview was pretty well like a basic interview until we got to the point—well, I made the

statement to him that I was old-fashioned in my beliefs. And I had heard some rumors that Judge Lanier and one of his previous employees had something going at one time. So, I made the statement at my first interview that I was old-fashioned in my beliefs and more or less wanted to get the point—

Q. (Interjecting) Did you understand that whatever the rumors that you heard, did you understand that that was a consensual relationship?

A. Yes.

* * * * *

[123] Q. How many other people were in that office?

A. Myself, at the time, Rob Hammond, and Beth Daring was the secretary.

Q. How much interaction did you have with Judge Lanier in your position?

A. I was told that I was to have weekly visits with him because I was supervisor. I was to have weekly visits with him to let him know how the office was doing. Also, we have court twice a month. I would have to go over the docket with him twice a month for court.

Q. When you would have these weekly meetings with him, would it be just you and Judge Lanier?

A. That's correct.

Q. Did you come prepared to talk to him about what was going on in your office?

A. That's correct.

Q. Did he have any complaints about the way you were doing your job, the way you were supervising the office at that point?

A. No, he did not.

Q. How would you characterize your working relationship with him when you first started your job?

A. The working relationship was good, we got along. If we [124] had a disagreement, we tried to talk about it and we got along fine.

Q. I believe you also said you met with him on the docket to discuss what was going to go on in Juvenile Court, is that right?

A. That's correct.

Q. Would that just be you and Judge Lanier as well?

A. No, when we went over the docket, we usually—I usually had the other officer with me because they had cases just like I had cases and they knew more about theirs than I did.

Q. Ms. Sanders, I want to ask you about an incident. You were in Judge Lanier's office in a meeting, one of your weekly meetings, I believe. And he reached over and grabbed your breast. Would you tell the jury what happened?

A. I was there on one of my weekly visits. I really don't remember the conversation we were having. As well as I remember, we were talking about cases because that's why I was there. At the time, I was sitting in a chair and I always made sure when I came in I sat in the chair closest to the door.

Q. Why was that?

A. Because of the things that I had been, that I had heard.

Q. Go ahead.

A. He came over, sat beside me in a chair, and I don't [125] remember the conversation, but he just reached over and grabbed my breast.

Q. What did you do?

A. I became very upset, I sort of went into shock, like. I really—I don't remember what I done.

Q. Did you try to move his hand?

A. Yes.

Q. Did he actually grab your breast or did he just touch it, slide by—

A. He grabbed my breast.

Q. Did he say anything to you when he did that?

A. He could tell I became very uneasy and upset, I feel like. And he was saying things like, "Don't be afraid, don't be scared."

Q. What did you do?

A. I got up as soon—as fast as I could, and I got out of there. I just left because, again, I was sort of in a state of shock to think that this had happened to me.

Q. Did you say anything to him about it?

A. No, I did not.

Q. Did you talk to him later about the incident?

A. That incident, later on I did. Not at that point.

Q. Did you go and talk with him about it sometime afterwards.

A. No, I did not.

[126] Q. Why not?

A. Because I was thinking that he would get the message by me getting up and walking out. I was thinking he would get the message and leave me alone.

Q. Ms. Sanders, was it part of your job as a Youth Services Officer to go over to the courtroom of Judge Lanier and Juvenile Court?

A. Yes, it was.

Q. Now I ask you, do you recall events that when you were leaving the courtroom, Judge Lanier grabbed your buttocks?

A. Yes, I do.

Q. Would you tell us about why you were in court on that day?

A. Okay, we were in court. Like I said, we have court every second and fourth Wednesday and we were in there on juvenile cases. And when court was over, a lot of times there would be people standing around, like the D.A., and some of the attorneys and we might, you know, just chat a little while after court. Well, as we were walking out of the courtroom, the judge was coming

in behind me and when I was walking through the doors, when I was getting ready to go out, he grabbed me on my buttocks.

Q. How did he grab you on your buttocks?

A. He grabbed me.

Q. Was it a brush?

[127] A. It was a grab.

Q. Did you see him before he did that?

A. Yes, I did.

Q. How did you react?

A. There, again, I was more or less in a state of shock and I just hurried out the door as quick as I could to get out.

Q. Did you see him—did you turn around to look at him after he grabbed your buttocks?

A. Well, I seen him out of the—yes, I seen him out of the corner of my eye. I looked back, yes. I knew it was him.

Q. Did you say anything to him on that occasion?

A. No, I did not.

Q. Why didn't you talk to him then?

A. Again, I thought that he would get the message and leave me alone. I really felt that he would.

Q. Did you ever confront him about these two incidents, the two assaults that are charged in this indictment?

A. At that point, I didn't say anything at that point.

Q. Did you confront him later?

A. Yes, I did.

Q. What caused you to confront him about this?

A. I was in his office, again on a weekly visit. I was sitting in the chair that I always sat in, closest to the door. There's three chairs that sit there and I was always chose the one closest to the door. I was sitting in the [128] chair. I don't remember what we were talking about, but I got up out of my chair, I was getting ready to leave when he came over to me. He pinned me into the chair, backed me up against the chair and I was pinned

in to where I could not get loose. I was trying to get away and he had me pinned in to the chair. And when I turned my head, I finally got loose, and I was turned and he kissed me right on the lips.

Q. What did you do?

A. Again, I was in a state of shock to think that someone like this would do this, someone that's a judge that I looked up to. I was still in a state of shock.

Q. Were you able to get away?

A. Yes, I was.

Q. How did you get away?

A. Well, I got loose and—like I said, the door was right here and I got to the door and I got out.

Q. Did Judge Lanier say anything to you when he grabbed you and kissed you?

A. I don't remember anything he said, I can't remember anything.

Q. What were you doing when he was trying to grab you and kiss you?

A. Well, I was trying to get away.

Q. When you finally got away, where did you go?

A. When I got away, I went back to my office, which is not [129] in the courthouse. And, by the time I got back to the office, I was so angry, I was so upset—

Q. Excuse me, were you crying in Judge Lanier's office?

A. No, he never seen me cry at that point. He did not see me cry. As well as I remember, he did not see me cry then. I got back to the office. I sat in my office and I thought to myself, I said there is no reason why I have to put up with this. I do my job and I do it good and I care about these kids and I don't have to put up with it. At that point, I called him on the phone, I said, "I need to talk to you." And he told me to come on over.

Q. Why didn't you talk to him on the phone?

A. Because I wanted to get my message across to him. I wanted to make eye contact with him, I wanted him to know that I meant what I said.

Q. Were you concerned about going back to his office after what happened?

A. No, because I was really mad. I was mad. I was upset.

Q. What happened when you went back to Judge Lanier's office?

A. When I went back to his office, I sat down, again, in the same seat. I told him that I appreciated him as a person and a judge and I hope he appreciated me as a person, that I was happily married. I was going to church, I was trying to live right, to do right, and I did not appreciate what he [130] was doing to me.

Q. How did he respond?

A. He looked at me and he said, "I'm sorry. I'm sorry."

Q. What did you do?

A. I accepted his apology at the time, or I tried to. But it was hard to. I mean, I heard what he said and I wanted to accept it but it was hard.

Q. How was it hard?

A. It—

MR. EMMONS: May I approach the side bar?

THE COURT: Let me see you up here, lawyers.

* * * * *

[132] BY MS. SPAIN

Q. Ms. Sanders, after you had this conversation with Judge Lanier, did you continue to work as the Youth Services Officer?

A. Yes, I did.

Q. Did you continue to have weekly meetings with Judge Lanier?

A. Yes, I did.

Q. Did Judge Lanier have any complaints about the way you performed your job?

A. Yes, he did.

Q. What happened?

[133] A. From that point on, I never done anything right. Knit-picky little things that he had never said anything to me about before that I had been doing wrong that I was doing wrong now. Later on, he then took my supervision of the offices away. I was no longer supervisor of the offices. I was to turn in doctors statements for days that I had missed and he singled me out of the whole office. I was the only one that had to do that.

Q. Did he explain to you why he took your supervision away and your position as supervisor?

A. Because I wasn't acting as supervisor?

Q. Were you aware—

THE COURT: I'm sorry, I didn't hear that answer. Because why?

A. Because I was not acting as—he was implying that I was not supervisor, that he took that away because I was not acting as I was supervisor, that I was not taking control at the time. Also, he told me that I myself and Edward Barr were on the same level.

Q. Who was Edward Barr?

A. The new employee that he hired after Lisa Golden left.

Q. Did he explain to you any specific procedures that you didn't follow?

A. I didn't come for my weekly visits like I was supposed to.

[134] Q. Ms. Sanders, why did you not go for your weekly visits?

A. Because I didn't want to be put back in that situation again. It was hard for me to go back over to his

office, knowing that I was going to have to go back there with him by myself.

Q. Were you afraid to go over to his office by yourself?

A. Yes.

Q. What were you afraid of?

A. I was afraid that something like that might happen again.

Q. Did you think about quitting your job?

A. No.

Q. Why not?

A. Because I knew I was doing my job and I was doing it well and I knew that I was getting through to these kids. And that's what I had always wanted to do was work with kids and I wasn't going to let that stop me because I knew they needed me.

Q. Are you still working in that position today?

A. Yes, I am.

Q. Did Judge Lanier continue to have complaints about the way you performed in your job?

A. Yes, he did.

* * * * *

[141] Q. Did you ever go to the District Attorney's office in Dyersburg and complain about what he did?

A. No, I did not.

Q. Why didn't you do that?

A. Well, I guess I didn't because I'm just a small-town girl and I didn't think anybody would probably believe me over a judge. I didn't think anybody would believe me over him because he had so much influence in Dyersburg and I figured they would probably believe him instead of me.

Q. Did the FBI come and talk to you in this case? You didn't go to the FBI, did you?

A. No, I did not.

Q. Did they come and find you?

A. Yes, they did.

Q. Were you subpoenaed to testify in this case?

A. Yes, I was.

Q. Has this been hard for you?

A. Very hard, very hard.

* * * * *

[147] [Mr. Emmons:] Q. Well, I make complaints about the way my secretaries and my employees do their job, too, all the time. I hear the same thing you're saying. But I can fire them any day, but I don't. He didn't use his judicial power or his power as your [148] boss in any way at all to retaliate against you, did he?

A. Well, I think he did. I think—

Q. Did he fire you? Are you saying because he complained about your work, that's retaliation?

MS. SPAIN: Your Honor—

A. He took my supervision away that he gave me—

MR. EMMONS: Just a moment, Ms. Spain is making an objection.

MS. SPAIN: Your Honor, I believe Mr. Emmons is cutting the witness off as she is fixing to explain how she felt the Judge Lanier used his powers, and I would ask that she be allowed to finish.

THE COURT: Let her fully answer the question. Go ahead.

BY MR. EMMONS:

Q. I'll rephrase the question and let you answer. I think you were about to answer that he took your supervisory powers away.

A. Yes, he did. He also singled me out. I was the only one to turn in doctor's statements for days that I missed, nobody else in the office, always complaining. Would you call that retaliation?

Q. You didn't get fired, though.

A. No, I did not.

* * * * *

[158] Q. This is the way he retaliates at you, by letting you use [159] the county car?

THE COURT: Mr. Emmons, do you have a question?

BY THE WITNESS

A. Two years, a year or two?

THE COURT: Excuse me a second. You have a question, Mr. Emmons?

MR. EMMONS: I'll rephrase it, Your Honor. I'm sorry.

BY MR. EMMONS:

Q. In other words, this was after you felt like he was being retaliatory towards you?

A. As well as I remember, I can't remember if it was that I used that car before I confronted him or after I confronted him. I cannot remember.

Q. You just said about a year ago, it was three years ago—

A. I said a year or two.

Q. I'm sorry, I misunderstood you.

A. I can't remember the exact date.

Q. Did you have a county car during your entire tenure or the very beginning of your tenure as a juvenile court officer?

A. Yes, I did—I do.

Q. The matters you talked about and testified on direct in regard to the allegation you made about him touching you all took place very early on at the first month or two while you [160] were there?

A. That's correct.

Q. So when you went to the doctor in Jackson in the county car, it would have been after this, wouldn't it?

A. I really can't recall.

Q. You can't recall?

A. I can't remember the exact date.

Q. Do you think it was the first month or two you worked there?

A. If I say yes or no, I can't answer you right because I don't remember.

Q. But, in other words, he said okay, technical violation of the rules but he said, emergency, go ahead?

THE COURT: Mr. Emmons, we're getting repetitive. Let's go on to a new question.

MR. EMMONS: I need to follow up on this one.

THE COURT: Well, you can follow up but don't ask it again.

MR. EMMONS: Yes, sir.

BY MR. EMMONS:

Q. Ms. Sanders, were there not other incidences where you used the county car for your personal use?

A. On one other occasion, maybe.

Q. And what was that for?

A. I didn't have my car and I might have used the car one [other time].

* * * * *

[181] REDIRECT EXAMINATION

BY MS. SPAIN:

Q. Ms. Sanders, before Judge Lanier assaulted you and you confronted him, did he ever complain about the way you supervised the Youth Services Office?

A. No, he never really made any complaints.

Q. Before he assaulted you, did he ever complain about the way you dealt with juveniles in your job?

A. No, he did not.

Q. Did he ever require you to have a sick leave list, if you were actually sick and had to take a day off?

A. No, he did not.

Q. Would you say that Judge Lanier's attitude changed after you confronted him about the assault on you?

A. Yes, it did.

Q. Did he constantly complain about the way you supervised the office?

A. Yes, he did.

Q. What did he tell you when you asked him about a raise?

A. When I—I'm going to have to go back a little piece. When I was hired in with Rob, the Judge and I had talked about a raise and I didn't feel at the time that I needed to be—have a raise at that time because I was coming in and Rob had been there two and a half years, okay? So I went back to him later after I had been there, I went to him and [182] asked him for a raise. When I asked him about a raise, he told me that I didn't deserve a raise, that I was making good money for a woman, that he had got letters from people complementing him on how well Lisa Golden was doing her job but I, he hadn't got anything on me, that, more or less, I was sitting over there drawing a paycheck and I wasn't doing anything.

Q. Did he continue to complain about the way you performed your job after he had assaulted you?

A. Yes, he did.

Q. After the FBI came to you, did his complaining continue or get worse?

A. Yes, he did. It continued.

Q. I believe that you told Mr. Emmons that the sick leave policy, or I believe Mr. Emmons asked you about the sick leave policy, when it was instituted. Did he institute that policy near the time this investigation began?

A. I really can't—I really don't know the answer to that. To that county policy? No, I can't remember.

Q. Were you missing days at work because you had been subpoenaed to testify in front of the grand jury in this case?

A. Yes, I was missing those days.

Q. Did Judge Lanier continue, during this investigation, to complain about the way you performed your job?

[183] Yes, he did. Constantly.

Q. Now Ms. Sanders, I believe that you told Mr. Emmons that this has been tough for you and he pointed out that Judge Lanier had not fired you. Had Judge Lanier retaliated against you for your conversation with him?

MR. EMMONS: Your Honor, I'm going to object to this. May I approach the side bar?

(Whereupon, counsel approached the bench, and the following occurred out of the hearing and presence of the jury, as follows:)

(Whereupon, counsel returned to the counsel table, and the following occurred in the hearing and presence of the jury, as follows:)

BY MS. SPAIN:

Q. Ms. Sanders, I'll ask you again. Do you believe that Judge Lanier retaliated against you after you talked to him about the assault on you?

A. Yes, I believe he has.

[184] Q. How?

MR. EMMONS: I'm going to object, Your Honor, to that question. I'm not interested in her opinion, I don't think that's right.

THE COURT: The objection is sustained. Ladies and gentlemen, disregard the last question and answer. Go ahead.

BY MS. SPAIN:

Q. Ms. Sanders, could you tell me what Judge Lanier did or what changes that he made after you talked with him about your job? What changes did he make in the way you were supposed to perform your job?

A. He constantly made complaints about how I done my job, that I didn't follow procedures. Constantly, he made statements at open court when I was having to go in court with juvenile cases, he made statements in open court. Just took my supervision away, required me out of the whole office to turn in doctor's statements, just one thing after the other.

Q. Did this continue until Judge Lanier stepped down?

A. Yes, it did.

* * * * *

[212] SANDY MAE ATTAWAY,

The said witness, after having been first duly sworn, was examined and testified, as follows:

DIRECT EXAMINATION

BY MS. SPAIN:

* * * * *

[213] Q. Are you married?

A. Yes, I am.

Q. Do you have any children?

A. Yes, I do.

Q. How many children and how old are they?

A. I have one boy and he is seven.

Q. Ms. Attaway, do you know Judge David W. Lanier?

A. Yes, I do.

Q. How do you know him?

A. I was friends with his daughter, and then I worked for him.

Q. Which daughter were you friends with?

A. Leigh Anne.

Q. Did you go to school with her?

A. Yes, I did.

Q. You say you worked for Judge Lanier. How did you come to work for him?

A. Leigh Anne had told me that he had needed a secretary and so I told her that I would like to apply for the job.

Q. Did you apply for that job?

A. Yes, I did.

Q. Do you recall when that was?

A. When I applied for it, it was probably the latter part of February when I talked to Judge Lanier.

[214] Q. Was that 1991?

A. 1991, yes.

Q. Okay. Did you have an interview with Judge Lanier?

A. Yes, I did.

Q. Can you tell us about that interview?

A. It went as a basic interview would. He asked basic questions, why I thought that I wanted the job, and just a basic interview.

Q. Did you get the job?

A. Yes, I did.

Q. When did you start?

A. It was the first week in March, it was the 2nd or the 3rd of March.

Q. Is that March of 1991?

A. Yes, 1991.

Q. How long did you work for Judge Lanier?

A. Approximately three months.

Q. Ms. Attaway, after you started working for Judge Lanier, did he begin to make some sexual comments to you?

A. Yes, he did.

Q. How long did you work with him before he made those comments?

A. About a month. It didn't start right off the bat.

Q. During the first month that you worked there, how would you characterized your working relationship with Judge [Lanier?]

* * * * *

[224] Q. Can you tell that jury what happened when you get him to sign the papers?

A. Uh, I had some attorneys in my office that needed some orders and stuff to be signed. So, the Judge had taken a break and I told him that I would come in there and get the Judge to sign them. I walked in there and told him that I had some orders to sign, that the attorneys were waiting in my office. I had the papers in my hand. He comes around behind me, drapes his arms around me and holds me, and then pushed his pelvic area into my rear end and began grinding into me. As soon as I felt that, I just jumped. And then I turned around and said, "You better stop it." And he said, "Shhh, they can hear you out there." And then I lowered my voice and I said, "Then you'd better leave me alone."

He grabbed the papers from my hand, signed them, and said, "Here." I walked out.

Q. Ms. Attaway, I know this is difficult. When he came up behind you, where did he grab you?

A. Where did he grab me?

Q. Yes.

A. He had his arms and he grabbed me around so that he had me basically like this (indicating).

Q. And you are indicating that he had his arms around you?

A. Around me, yes.

[225] Q. And you said he took his—

A. He took his pelvic area and was pressed up against me.

Q. Pressed up against your buttocks?

A. Against my buttocks, yes.

Q. Did you feel anything?

A. Yes.

Q. Ms. Attaway, could you feel his penis against you?

A. Yes, I could.

Q. Could you feel if it was erect?

A. Yes. It was—I would say I could feel it.

Q. Could you tell if that is what he was rubbing against your buttocks?

A. That is what he was rubbing against me, yes.

Q. How long do you think he did that before you yelled to leave you alone?

A. Just a few seconds. As soon as I felt it, it was just like all I could do was just jump. I just jumped.

Q. Then what did he do?

A. He grabbed the papers and signed them and then handed them back to me and I left.

Q. But before you left, you said you said something to him?

A. Yes. That is when I hollered and told him to leave me alone. I just jumped. It was a spur of the moment, and [226] I said, "You'd better leave me alone." And then he said, "Shhh, they can hear you."

Q. Who was he referring to?

A. The people in the courtroom. The courtroom was full, it was on a court day.

Q. Is that why he had just come out of court?

A. Right.

Q. Did he still have on his judicial robe?

A. Yes, he had on his robe.

Q. Did he say anything to you when you told him he better stop?

A. No, other than—well, now, the last time he didn't when I walked out. But now he did, he said, "Shhh, they can hear you." And then I turned and said, "Then, you'd better leave me alone." And he just jerked the papers from my hand and signed them and did them like that.

* * * * *

[242] BY MS. SPAIN:

Q. Ms. Attaway, did Judge Lanier ever ask you if you were afraid of him?

A. Yes, he did.

Q. How many times did he ask you that?

A. Twice.

Q. How did you respond to that?

A. I told him no.

Q. Was that the truth?

A. No.

Q. Why did you tell him no?

A. I didn't want him to think that I was afraid of him. If I was afraid of him, I was a weak person and he could—

[243] Q. He could what?

A. I would say manipulate weak people. And I definitely did not want him to think that I was a weak person.

Q. Did Judge Lanier tell you why he asked you that, if you were afraid of him?

A. He told me that he was a judge and everybody should be afraid of him.

* * * * *

[244] Q. Now, Ms. Attaway, when you first applied with Judge Lanier, were you afraid that you weren't going to get the job as his secretary?

A. Was I afraid that I wouldn't?

Q. Yes.

A. It had crossed my mind.

Q. Did you have a concern about something?

A. Yes. I had a case that had went before him and my attorney had told me that he was going to appeal it and get us a new trial.

Q. What type of case did you have?

A. It was an auto accident.

Q. You were involved in an automobile accident?

A. Yes.

Q. Did you have an attorney?

A. Yes, I did.

Q. Did you file a lawsuit in that case?

A. Yes.

Q. Did the other side also have an attorney?

A. Yes.

THE COURT: Let me interrupt you. I'm not sure I heard something, and I just want to make sure. Did you say you had a case in his court?

THE WITNESS: Yes, sir.

THE COURT: Okay, go ahead.

[245] BY MS. SPAIN:

Q. And did the other side also file a lawsuit?

A. Yes.

Q. How did your attorney explain that to you?

A. How did he explain?

Q. How did you explain that the lawsuit worked? You had filed a lawsuit, is that right?

A. Right.

Q. And the other side had also filed one?

A. Right.

Q. Did you have a trial?

A. Yes.

Q. Who was the trial in front of?

A. Judge Lanier.

Q. Did this occur before you ever applied with Judge Lanier?

A. Yes.

Q. And what happened at that trial?

A. It was a jury trial and the jury did not side for either one of us.

Q. So, would you say both sides lost?

A. Both sides lost, yes.

Q. And what happened after that?

A. My attorney told me that he was going to appeal it, that we should have won it.

[246] Q. Okay. And do you know if he did that?

A. He never talked to me about it. Later I found out that he did.

Q. Has your lawsuit been resolved even today?

A. No.

Q. Now, at the time that you applied to work for Judge Lanier as his secretary, what was your concern with your lawsuit?

A. Well, I knew that he could not hear my lawsuit if I was employed by him. So, I had thought that, you know, that might would keep me from getting the job.

Q. Did you later find out that there could be something done about that?

A. Yes. I was told that he could step down.

Q. Who would hear your lawsuit?

A. I don't know, but that, you know, he would not hear it.

Q. When you applied with Judge Lanier, did he ever bring your lawsuit up?

A. No.

Q. Okay. While you worked for him, did it ever come up?

A. He had brought my file into my desk one time and it had motion granted. And then I looked down and it was my file and we neved did—I mean, we didn't even talk about it then.

[247] Q. What type of motion was that, do you know?

A. I guess it was an appeal.

Q. Was that for a new trial?

A. Right.

Q. Have you had a new trial on that case yet?

A. No.

Q. After you were hired with Judge Lanier, I believe you said you worked there for how long?

A. Approximately three months.

Q. Why did you leave?

A. He called me to his office one day and told me that things just weren't working out between us and I needed to find another job, that I could stay until I found another job but I needed to find another job.

Q. Did he give you any reason for letting you go?

A. He just said things weren't working out.

Q. Did you ask him what that meant?

A. Yes, I did. I said, "What do you mean?" He said "I'm just saying things aren't working out between us." I then said, "It's because I won't have anything to do with you isn't it?" He said, "Huh, I haven't tried anything with you."

Q. I'm sorry, I didn't understand what you just said.

A. He said, "Huh, I have never tried anything with you." Then I looked at him and I said, "You sure haven't, [248] have you." I was being really sarcastic to him.

Q. Did he ever give you any other reason why he was letting you go as his secretary?

A. He said that I had wore jogging pants to work.

Q. Have you?

A. No. He said that I had messed his calendars up, which I had not.

* * * * *

[257] A. He asked me what the telephone calls were being said. And I told him that they were very vulgar and I'd just as soon not tell him. And he said, "Come on, you can tell me." He said, "I want to know what they are saying to you."

Q. What did you say?

A. And I said, "Well, they are calling me by name telling me that they have a big ten inch 'blank,' and I used the word blank to him, 'and heard that I liked to suck and the 'f' word that rhymes with it."

Q. Is that the way you told it to him?

A. Yes.

Q. Is that the way the caller on the phone said it?

A. No.

Q. How did he respond when you told him that?

A. He said, "Do you?"

Q. What did you say?

A. I look at him and I said, "That is none of your business." I stood up and went for the door.

Q. What happened?

A. He grabbed me.

Q. Did he say anything?

A. Nope. He just grabbed me, turned me around and had me like this and went to kiss me. He was holding me at this time. I mean, his arms was around me and he was holding me. He went to kiss me, I turned my head. And then he [258] landed on my neck and kissed my neck several times. And then I just said, "I got to go." And I just pushed away from him and I grabbed the door.

Q. During your conversation about this phone call, after he asked you if you did do that, did he say anything else to you about your job?

A. About my job or about the job I—

Q. Do you recall if he told you what it would have taken for you to keep your job?

A. No. He told me that if I would have liked that, we would have—

MR. EMMONS: Your Honor, excuse me—

THE COURT: Excuse me a second. Sir?

MR. EMMONS: I object to the leading question and I object to the answer.

THE COURT: Sustained.

BY MS. SPAIN:

Q. Ms. Attaway, do you remember any other conversation that you had with Judge Lanier before he got up and turned around and grabbed you?

A. He told me—after I told him that was none of his business and I jumped up to the door, he said, "If you would have like it, we would have got along fine."

Q. What was he referring to?

A. If I had of liked oral sex.

* * * * *

[264] CROSS EXAMINATION

BY MR. EMMONS:

Q. Ms. Attaway, of course, I am Wayne Emmons and I am Judge Lanier's lawyer, as you know. And I, of course, have a lot of questions to ask you. And if you don't understand any question, if you want me to repeat it for any reason, just let me know; okay?

A. Okay.

Q. Let's start with your employment right now. You are now working at First Citizen's Bank, correct?

[265] A. No. I am laid off from First Citizen's.

* * * * *

[269] Q. Do you know that that is his bank and that he banks there, that the President is a friend of his? Do you know [270] that or not?

A. Yes.

Q. So, if he had wanted to retaliate against you when you got that job, he very likely could have, couldn't he?

A. I suppose.

Q. But he didn't?

A. No.

Q. Now, have you talked with—you say you are stressed out. We are all stressed out and I know you are stressed out. I am not criticizing that. Did you talk—

how many times have you talked to Ms. Spain or Mr. Castleberry and gone over your testimony here today?

A. I have read my transcript twice.

Q. And the transcript you refer to is the transcript of the grand jury testimony?

A. Yes.

Q. And have you had personal interviews with them, either Ms. Spain, Mr. Castleberry, Mr. Moskowitz, Mr. Parker, on numerous other occasions?

A. I don't remember how many times I have talked to them.

Q. Several times?

A. Several.

Q. And have these conversations taken quite some time?

A. Yes.

* * * * *

[279] Q. There was no individual—I am not suggesting romantically involved—but was there not a male friend that came by on numerous occasions, a friend of yours?

A. Now, I had friends come by, but they never stayed.

Q. Was there not one particular individual that came by?

A. I cannot name a particular individual.

Q. Wasn't that mentioned to you as one of the reasons that you were not doing your job well?

A. No.

Q. As a matter of fact, he never fired you, did he?

A. Yes, I was fired, but the slip said I was laid off. But how would you take it? He told me, he said, "Things just aren't working out, you need to find another job." I took that as being fired.

Q. Well, was that when you went back with your keys and you told him you were quitting. He implored with

you and said, "You don't have to quit, keep working until you find another job."

A. He did not say I did not have to quit. He said, "Don't you want to stay until you find something else."

Q. But that doesn't sound like a firing to me. Does that sound like a firing to you?

A. Yes, it does. What else was it supposed to mean?

[280] Q. Well, let me see if I've got it straight what happened. He says, "Things aren't working out, therefore you need to find another job." But he didn't tell you to leave right then, or today, or tomorrow, or give you two weeks notice. He simply wanted you to begin looking for another job, when you found one, go leave, correct?

A. Yes.

Q. You made the decision to leave, then, didn't you?

A. I handed him the keys, I left, yes.

Q. You were very angry about this whole episode, correct?

A. I was hurt.

Q. I'm not talking about the allegations of being touched?

A. I was hurt.

Q. You're talking about in addition you were hurt, because you felt like—and you may have been—you felt like you were a good secretary.

A. He had told me I was doing a very good job.

Q. And he didn't feel like you were doing the job, apparently, and so that caused you to be very hurt with him; is that correct?

A. Yes. My feelings were hurt very bad. I thought I had been doing a very good job. Like I said, he had told me I was doing a good job. And I just could not believe he was [281] letting me go.

Q. And this made you very angry?

A. It made me hurt. I was hurt, I cried. I can't say I was angry because I was hurt.

Q. And in regard to these allegations about sexual misconduct, those were never reported to anyone except this one girl friend of yours, or cousin; is that correct?

A. That is who I talked to, yes.

Q. Tina Brock.

A. Tina Brock, yes.

Q. And she worked there in the same office?

A. No, juvenile office.

Q. She was his employee also?

A. Yes.

Q. But that is the only living person you ever told this until the FBI sought you out, correct?

A. Yes.

Q. So, you were hurt and mad about being fired, but not hurt or mad enough about what you say happened between you and him, or even tell anybody about it?

A. I was—it is very disgusting what had happened. I was embarrassed, it is not something that you would go around and tell somebody. It is humiliating.

Q. Why would it embarrass you because he did that?

A. It is just embarrassing.

[282] Q. So, you didn't report it to—you didn't tell your husband about it?

A. No.

Q. Nor your parents?

A. No. I told no one but Tina.

Q. And you kept going back day after day, didn't you?

A. To work?

Q. To work.

A. Yes.

Q. You kept subjecting yourself to what you have testified to where this physical touchings that were unwanted?

A. I thought he would quit. And like I said, I had to have a job. My husband was making maybe a hundred dollars, you know, a week. He worked according to the weather. I couldn't just up and quit a job. I have a child

I had to get to school. We had bills we had to pay. I could not just up and quit my job.

Q. There were other jobs, weren't there?

A. It takes so long to find a job. I have been looking for a job for months, now, and I can't find a job.

Q. Why did your husband quit his job?

A. Why did he quit his job?

Q. During that period of time.

A. He was working second shift and we did not spend any [time together.]

* * * * *

[286] A. Mr. Kelley told me he was going to appeal it. He told me, I didn't say anything to him.

Q. All right. He did do that?

A. Now, yes. I have found out, yes.

Q. Did you go see Judge Lanier, originally, to try to get a job or to try to influence him about that case?

A. I went for a job.

Q. Did you talk to him about the case?

A. No.

Q. Did you try to?

A. No.

Q. Did he try to talk to you about the case?

A. No.

Q. When you went back into the courtroom with your attorney to hear the motion for a new trial, was he not on the bench?

A. I was not present.

Q. Okay. Do you know from your attorney whether or not he refused at first to have anything more to do with your case because you are now working for him, unless both attorneys agreed to do that?

A. I do not know what they said, I was not—I did not know anything else about it until Judge Lanier laid the case on my desk and had "motion granted". And I looked and it [287] was my case.

* * * * *

[295] Q. Were there not in fact numerous scheduling mixups regarding the Judge's calendar while you worked as his secretary for that short period of time?

A. No, I only recall that one.

Q. Part of the clothes you wore that he objected to was a sleeveless knit tops, is that correct, or not?

A. I don't own any sleeveless knit tops.

Q. He didn't say anything to you about that?

A. No. I would not wear sleeveless knit tops anyway.

Q. You stated very strongly that you are not scared of him. You said that you weren't going to let him get the best of you, so to speak. You kept going back time and time again, did you not, at the same time alleging that he was molesting you all of this time?

A. I don't understand what you are asking me.

Q. Did you keep going back time and time and time again?

A. I had a job, of course I had to go back. I was working for him.

Q. Well, after you quit your job, you went back time and time and time again?

A. No, I did not go time and time again. I went for a separation notice and then I went to get a letter of recommendation. That is the only two times I ever came into contact with him afterward. As a matter of fact, he came to me one other time.

[296] Q. What about the time you called him and wanted to know, after all of this had occurred, if he could help you with the power of attorney? Have you forgotten that?

A. Yes, I had forgotten that, you are correct on that. My father had left town and wanted to give me power of attorney of his house. And he asked me if I knew somebody to call to see how we did it. I called the Judge. The Judge told me that he could do all of the paper work, for me to come see him. I did not go, we went somewhere else.

Q. But you called him?

A. Yes, I did call him to ask him. I knew he would know, he can't do anything to me on the telephone. I knew that.

Q. You knew other lawyers in town?

A. Yes.

Q. Worked for some of them?

A. No.

Q. But you knew them well?

A. I knew Charles Kelley from being my attorney. I knew other lawyers from working with the Judge.

Q. You know Janelle working up there at Charles Kelly's office?

A. Yes, I know Janelle.

Q. You know all of the other lawyers that come into court there, correct?

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TRIAL TRANSCRIPT

(December 3, 1992)

[369] **VIVIAN ARCHIE,**

The said witness, after having been first duly sworn, was examined and testified, as follows:

DIRECT EXAMINATION

BY MR. PARKER:

Q. Could you state your name, please?

A. Vivian Archie.

Q. Okay, Ms. Archie, how old are you?

A. Twenty-six years old.

Q. And where do you live now?

A. In Winterpark, Florida.

Q. How long have you lived there?

A. It will be a year December 29th.

Q. Where did you live prior to that?

A. In Dyersburg, Tennessee.

Q. And how long did you live in Dyersburg?

A. Approximately twenty-four years.

Q. Did you grow up there?

[370] A. Yes, I grew up from childhood.

Q. Growing up there, did you know David Lanier?

A. Yes, I did.

Q. How did you know Mr. Lanier?

A. From the time I can remember, he was the Mayor of our town and my house was very close to his house. I was friends with his older daughter.

Q. Which daughter is that?

A. Leigh Ann. And my little brother was friends with his younger daughter, Robbie.

Q. Okay. Did you all ever socialize together as children or his family?

A. Yes. I can remember one occasion that I was over at their house and played in the tree house with

Leigh Ann and we, you know, spent the summer's at the country club swimming pools, and Christmas dances that the Eight Graders put on, we were all in that. And through high school, you know, she was a cheer leader, I was a basketball player. And even though she was the—I think she was the football cheerleader, but we still—you know, athletic teams, we did things together.

Q. All right. Were you ever married?

A. Yes.

Q. When were you married?

A. Oh, wow. October of '88.

[371] Q. All right. Now, how long was that after you got out of high school?

A. Four years.

Q. How long were you married?

A. It was about—well, I was divorced in June of '89.

Q. All right. Was it an abusive relationship?

A. Yes.

Q. Did anything good come out of that relationship?

A. My daughter. I have a little girl.

Q. What is her name?

A. Her name is Ashley.

Q. How old is she today?

A. She is three.

Q. Who has custody of Ashley today?

A. My mother.

Q. Have you had trouble with your parents?

A. Yes, a lot.

Q. Like what?

A. They have kidnapped her before and taken her away and I had to go through a big custody battle to get her back.

Q. All right. Eventually—you can pull that box around there, if you want.

(Witness crying.)

When this investigation started, was there a lot of pressure on you?

A. Meaning?

[372] Q. Was there a lot of pressure on you and the dispute with your family?

A. Oh, yes.

MR. EMMONS: Your Honor, I am going to object to leading questions. They have all been leading up to this time.

THE COURT: All right. Mr. Parker, avoid leading questions.

MR. PARKER: I'm sorry, Your Honor.

BY MR. PARKER:

Q. Because of this pressure, what did you do with Ashley, as far as—

MR. EMMONS: (Interjecting) If The Court Please, we would object to that.

THE COURT: Rephrase your question.

MR. PARKER: All right.

BY MR. PARKER:

Q. Did you do anything with Ashley as far as custody was concerned?

A. Yes. I couldn't bear to live in Dyersburg anymore. So, even though they had fought me and I had gotten custody back, I had to do something to get my life back together, so I signed a consent order giving temporary custody of my daughter to my mother until I could get it together.

Q. Now, let me take you back to the summer of 1990. Did you have a job?

A. I had a job for a while at Cole Chiropractic Clinic, [373] but then I had a cyst rupture on my ovary and I had to go in and have surgery. So I was off work for like six weeks within that time. And when I went back to work, I had wanted to go back to school and Dr. Cole wouldn't work with me on my hours so I ended up quitting.

Q. Okay. I may have gotten a little ahead of myself. Let me go back to your marriage for one second. You say it lasted a year?

A. Yes, sir. It was June.

Q. Did it end in a divorce?

A. Yes.

Q. What judge heard that divorce?

A. Judge Lanier.

Q. And who was awarded custody by Judge Lanier?

A. I was.

Q. Now, you were out of work in 1990 after the surgery, is that correct?

A. Right.

Q. What type of pressure was at home regarding that?

A. Oh, it was horrible.

Q. Where were you living?

A. I was living with my parents, my daughter and I were living with my parents. And my father is a real workaholic and he just—he was really on me to get a job. You know, he said that I was—he would call me "lazy," "no good," [374] and things like that all of the time, even though I was out looking for a job, it didn't matter because I didn't have one.

Q. Did you ever hear about a job in the courthouse?

A. Yes.

Q. How did you hear about that?

A. My friend, Lisa, told me.

Q. Lisa who?

A. Golden.

Q. Where did she work?

A. She was a juvenile officer.

Q. Who did she work for?

A. Judge Lanier.

Q. What did you do to try to get this job?

A. I took my resume one day and I knocked on the door because there wasn't a secretary there, of course. And I just slid it under the door.

Q. I'm sorry, what door?

A. The chambers door.

Q. At the courthouse?

A. Yes.

Q. Did you talk to anybody that day?

A. Not that day.

Q. Did you get a call from anybody after that?

A. No, I went a couple of days later when I hadn't [375] heard anything and I took my resume again, and I went to the secretary's door and there wasn't anyone there. I went to the courtroom window and looked in and no one was there. And I knocked on the chambers door and you know, no one answered then. So, I went to—

Q. (Interjecting) Now, which door, where was this door in the courthouse? You keep calling it a chambers door.

A. It was the door right here (indicating) like by the hallway.

Q. In the hallway?

A. Yes.

Q. All right. We will pull that out in a minute and go over that. What happened when you knocked on that door?

A. Well, at first no one answered, so I went to the phone and called Lisa and she said to go back and knock again. So, I knocked harder this time and Judge Lanier answered the door this time.

Q. All right. What happened next?

A. He invited me to come in and I told him—you know, I handed him my resume and told him what I was doing, that I wanted to apply, fill out an application for the secretarial position there.

Q. All right. What did he say?

A. He said that he would look over my resume and give me an application to fill out.

Q. All right. Did you fill out an application?

[376] A. Yes.

Q. Where was this at?

A. In the chambers.

Q. All right. Where was he sitting?

A. At his desk, at his chair.

Q. Where were you sitting?

A. I sat across from the desk, like. It would have been in the one chair.

Q. Okay. What did you talk about?

A. Well, we didn't talk much about my resume. He started talking about—he mentioned my father had been to see him. He asked me how my family was doing, how things were going at home. He said—we talked about Leigh Ann and her newly born son. And we just talked about—you know, like I said, he started asking me questions about my father and me getting along.

Q. All right. Did he ever tell you why he was asking about whether you got along with your father or not?

A. He said that my father had come by and had told him things, and like that I had a boy friend. And he told me about—he told me Cain's name. He told me my father was saying I wasn't being a good mother and that he was interested in seeing about getting custody of my daughter.

Q. Okay. So, the judge told you that your father came over and wanted the judge to take custody away from you of [377] Ashley?

A. Yes.

Q. How did that make you feel?

A. Scared. My daughter is my life.

Q. What did you say to the judge when he said that?

A. I asked him was he going to take her away from me. (Witness crying.)

Q. What did the judge say?

A. He said—and then he started telling me that he couldn't talk about it, that the laws were that he couldn't talk about it. That he is the judge and he has to hear the cases.

Q. All right, he wouldn't tell you anything other than what your father said?

A. Huh, uh.

Q. What happened next?

A. Well, he told me that he had already promised the job to one of Bubba Agee's friends, and that it wouldn't be opened for long. He was going to fill it pretty soon. And I asked him then, I said, "Well, you know, I would really do anything for a job, I really want to work." "If you hear of anything, would you please keep me in mind."

Q. When you said, "I would do anything for a job," what did you mean?

A. I mean that I had worked on a farm for my father, and I had worked in the office. I would do any type of work, I [378] wanted to do something. I just wanted a job, you know. I would be a floor sweeper if I had to be.

Q. And why did you want a job so bad?

A. To get my parents off of my back so I could support my daughter. I was scared that if I didn't have a job and couldn't support her, that that would give them leverage to take her.

Q. What happened next?

A. I was getting ready to leave and I reached across the desk to shake his hand bye, and when I did, he wouldn't let go of my hand.

Q. Now, let me ask you. Let me back you up a second. At that point in time, who was the person who was going to have to decide who would take your child away from you?

MR. EMMONS: I object to that, Your Honor. That is a legal conclusion.

MR. PARKER: Let me rephrase that, Your Honor.

THE COURT: Rephrase it.

BL MR. PARKER:

Q. At that point in time, what was your understanding as to who would take the child away from you?

A. It would have been in Chancery Court and Judge Lanier would have heard the case.

* * * * *

[382] Q. While he was standing over you, did you scream loud and for everybody in the courthouse to hear?

A. No.

Q. Why not?

A. I was scared. I was scared he would hurt me, or he would take my baby away from me and nobody would believe me.

Q. Nobody would believe you. Why is that?

A. Because he had all of this power. He could do anything he wanted to do.

Q. After you went in the bathroom and shut the door, what was the next thing that happened?

A. I cleaned up my mouth and I cleaned up my face, and everything. And I got ready. I got my nerve up and I opened the door and I just started walking real fast to go straight to the side door to get out of there, and—

Q. (Interjecting) Is there a way out other than past the judge?

A. No. I had to go back past his desk.

Q. Go ahead.

A. And as I was leaving, he started asking me, "Well, let me give you something for your troubles," and he was reaching into his back pocket to get his wallet out. But I just ran, I don't—I just ran.

Q. Which door did you run out?

A. The side door that I had come in, the one going to [383] the hallway.

Q. The hallway?

A. I ran down the steps. I had parked my car right by that entrance, that set of stairs. And I just ran right out.

Q. I know you said he hurt you when he pulled your hair and shook your head. At any other time was there any other time he—

A. (Interjecting) He was gagging me when he was in my mouth. He kept doing it harder and harder and I couldn't stop him. I was trying to push him out and push him away, and I couldn't, and he was just doing it harder

and harder. And it was hurting my throat. I have TMJ problems and it was hurting my jaws.

Q. TMJ is a medical problem with your jaws?

A. Yes.

Q. It causes pain in your jaws?

A. Yes. From a car accident.

Q. When you left the courthouse, where did you go?

A. I went riding by myself to my father's farm.

Q. Why did you go there?

A. Because that is where I grew up when I was a little girl and it was safe and I could talk to myself, you know. I could try to get it together before I had to go back to my family's home and face my mother, my father, and my little [384] girl.

Q. Did you go report it to the law enforcement people at all?

A. No.

Q. Why?

A. Because it wouldn't have done any good.

Q. Why is that?

A. He was the judge, it wouldn't have mattered. Nobody would listen and I would look like a fool.

Q. Did you go tell the District Attorney's Office, the prosecutor?

A. God, no.

Q. Why not?

A. It was his brother.

Q. The Judge's brother.

Q. What did you do?

A. I rode around and I buried it. I buried it inside and I tried to pretend that I had done something else all day, that I had just been on an interview. I tried to forget it.

* * * * *

[385] A. I went home to my little girl and I took a bath. I went home and she sat there in the bathroom with me when I started cleaning up some more.

Q. All right. Why did you take a bath?

A. Because I felt dirty all over. It wasn't just what he did, I just felt dirty. I wanted to wash it away, I wanted it to go away.

Q. What else did you do that night?

A. I don't know.

Q. You didn't have any other contact with the judge that evening?

A. No, I did not.

Q. When was the next time that you heard anything from the judge?

A. It was a couple of weeks later. He called and left a message. Our housekeeper had taken a message that he had called and knew where there was an interview for me that I could go to.

Q. Did you call him back?

A. Not at first.

Q. Why not?

A. Because I didn't want to see him again, I didn't want to go back. I didn't want to face it, I was trying to bury it and that would make it come back.

Q. Did you tell anybody what happened?

[386] A. I said some things but not really in detail. I talked with just some friends and just told them that I was scared of him.

Q. But you didn't tell them what actually had happened?

A. No, I never told them what—I never got into details.

Q. Why did you not tell anybody the details?

A. Because I still thought that they would blame me and that if I told people—I was embarrassed of it. I was humiliated. I didn't want to tell them that this man did this to me, and that I wasn't weak—I mean, that I wasn't strong. Everybody though I was a strong person and it would admit weakness.

Q. Did anybody besides your maid tell you that Judge Lanier had called about another job?

A. Oh, my mother.

Q. Tell us about that?

A. Well, my mom, when she first walked in, she saw the message. And she asked me had I called. And I said, "No." And she said, "Why not?" And I said, "Well, I have just been busy, I haven't had a chance yet." She said, "Well, you need to call him." "You better call him, if you don't call him, your daddy is going to be mad." "He is a good man and he can find you a job, and he is doing this, and he is doing that to get you a job." "You better call him."

[387] Q. Was she talking about your daddy?

MR. EMMONS: Your Honor Please, I have got to object to hearsay.

THE COURT: I don't believe it is being offered to prove the truth of what is being said. The objection is overruled. Go ahead.

BY MR. PARKER:

Q. You said he is a good man. Was your mother talking about your father or somebody else?

A. She was talking about Judge Lanier finding me a job.

Q. So, what happened, how long did that continue?

A. For about thirty minutes, or longer. Everywhere I would walk in my house, or in her house, she would follow me. And she would say, "Are you going to call." "Well, are you going to call?" "Why haven't you called yet?" "Why aren't you calling?" "You better call." "Your daddy is going to come in and he is going to go off." "You better call."

So, finally, I couldn't take it any more. I picked up the phone right in front of her and I called him. And I called and he said that he had a job interview. And I said, "Where," and he wouldn't tell me. He said, "You will have to come back over here and I'll tell you."

Q. Did you ask him again to tell you where?

A. Yes. I said, "Can't you just tell me right now, I am on a short time limit, I've got several other job [388] interviews." "Please just tell me now." And he says, "No, I've got to go now." "Be here at ——" He said, "The interview is at 12:30, be here at 12:00 o'clock."

Q. All right. Did he give you any information at all about where the job was?

A. Not anything.

Q. Based on that, what did you do?

A. Well, I got a dress on. This time I thought, well, I will wear a one piece dress where he can't reach up my top, you know. And I was really trying to stumble around and take a lot of time. I wanted it to be where I didn't have much time that maybe I could just run there and have to leave because the interview was going to be, you know, just any minute, and it would take me time to get there. So, I thought, well—and I was piddling around and piddling around, and my mom was then riding me then saying, "You better hurry up, didn't he say 12:00." I was like, "Yes, mom." "Yes, mom." And I was still trying to piddle around and like touch up my makeup or do anything I could think of to waste a little time, you know.

Q. All right. Now, did you go to the courthouse?

A. Yes.

Q. After this first incident, why did you go back to the courthouse?

A. Because I knew if I didn't go, my mother would find out. She would have called him and found out. And I was [389] scared if I didn't go, that he would get mad, that he would start thinking I had been talking, or something, and that then he would take my daughter.

Q. When you went to the courthouse, where did you go?

A. I went back to the secretary's office, and everything, just to see if maybe he was around there where I

could stay in that area, but he wasn't. So, I went and I knocked on the chamber door again.

Q. All right. What happened?

A. He came to the door and he invited me in. I was scared to go back in, so I kind of stood in the doorway, halfway in the hallway and halfway in the chambers holding the door open because his phone rang and he went to answer the phone. And I was standing there, and he motioned for me to come on in. And I was real scared, so I looked around a little bit and I decided to sit in the chair closest to the door this time where I could have my hand, you know, really close to the doorknob there.

* * * * *

[395] A. Because I had his—I had his in my mouth. He had an orgasm in my mouth.

Q. Semen?

A. Yes.

Q. You had to spit it out?

A. Yes (crying).

Q. You went to the interview and you got the job (crying)?

A. Yes.

Q. Do you need to take a break, Ms. Archie?

A. No, I want to go on.

Q. When was the next time that you saw Judge Lanier?

A. When we had lunch at Capasa.

Q. When you say we—

A. (Interjecting) I had lunch with a friend and we saw him there.

Q. Who was the friend?

A. Dr. Warner.

Q. Your boss?

A. Right.

Q. What is Capasa?

A. It was a Mexican restaurant that he owned the building of, that Judge Lanier owned the building of.

Q. Did Judge Lanier sit at the table with you?

A. Yes.

[396] Q. How did you feel?

A. Very scared.

Q. Did you show that to the Judge?

A. No. I tried not to. I tried to just act like it was every day—you know, just every day.

Q. Had you reported anything by the second incident?

A. No.

Q. Why not?

A. Because if he got mad at me, my child's custody matter was in his court and he could take her away from me. I was scared. I was scared of being humiliated and this whole story being turned around and me looking like the bad person again.

Q. At Capasa did he say anything to you?

A. He asked me if I had said anything to anyone, and he asked me when I was coming back over. That is one thing he had told me both times that I had come over and he had done that to me, he had told me, "Well, will you come back," "Will you come back once a week," "Will you come back—" And I just was running. I would just run.

Q. Was anybody else sitting there when he said that to you?

A. He said it as we were getting ready to leave. Everybody was kind of paying their bills and going their own way, taking care of their own check. So, he kind of—[397] there were people around but he said it in a low voice. I was just walking by him and he said it. And I just looked at him and said, "No," and just kept walking. I was by myself in my own car. I had driven and met them, so I just ran on to my own car and drove away.

Q. All right. When was the next time that you saw the Judge?

A. Uh, either another lunch at Capasa or it could have been when he came in as a patient.

Q. Did he ever say anything else to you about these incidents?

A. Yes. There were occasions also that I was in the courthouse visiting with my friends and he would see me in the hallway and he would ask me, "Have you said anything?" "Have you told anyone?" And "Why haven't you been back, why aren't you coming back to see me?"

Q. Did he say anything else?

A. He would ask me has anybody talked to me. You know, has anybody contacted me, is anybody talking to me, am I talking to anybody. He would ask me how my family life is doing now.

Q. Meaning what, how did you interpret that?

A. Like, well, he has allowed me to keep my daughter right now, but if I open my mouth, then he's not gonna.

Q. Would he say that—

A. No, he only would imply it.

* * * * *

[419] [Ms. Archie:] A. Yes, I was doing drugs.

[Mr. Emmons:] Q. My question is you were heavily involved in drugs?

A. Yes.

Q. Just as you got heavily involved again in drugs after this incident?

A. I took it one step further after this incident. One step that I am not very proud of.

Q. Well, let me ask you this. That is when you voluntarily gave custody to your mother and father?

A. My mother, right.

Q. To your mother?

A. Yes.

Q. Well, does your father live with your mother or not?

A. Yes, but she is not [on] the consent agreement. I mean, he is not on the consent agreement. It is just my mother and I.

Q. But he lives there?

A. Yes.

Q. And to whom did you go to try to get that consent agreement signed?

A. Who did I go?

Q. Who did you go to, what judge?

A. Actually, I believe Judge Riley is the one that signed it.

Q. Who did you go to first? Did you not ask Judge [420] Lanier to sign it?

A. Did I? No, sir, I did not. My mother had asked John Palmer to draw up the consent agreement. I went over, read the agreement before I left town and signed it. After that, I did not appear in court or anything. I don't know what avenues it went. I know that Judge Lanier had said to Sherry one time that he could sign it. But then for some reason or another, I found out that it had been interchanged over to Judge Riley's court.

Q. Well, you know for a fact working in law offices in Dyersburg, that Judge Riley can hear custody and child support, and divorce, just like Judge Lanier can, don't you?

A. No, I did not. I thought everything had to go to Chancery Court and then be interchanged if there was a conflict, was my understanding.

Q. How many law offices did you work at in Dyersburg?

A. One.

Q. And did you take papers over to the courts many times for other lawyers?

A. Yes.

Q. And Mr. Kelly's law firm?

A. Yes, I did.

Q. Now, you said you went to Florida to get your life together. And this was what, about a year ago?

A. Right.

* * * * *

[433] Q. And you felt like that this man could just do anything he wanted to do?

A. No, but I felt like after he did it, he had the power to cover it up.

Q. And that nobody would believe you?

A. That's right.

Q. Absolutely nobody?

A. I had talked—you know, I had talked to people who had gone to other attorneys, and they didn't want to get involved. Nobody wanted to help us until a friend went to the FBI.

Q. Well, did you think that Dyersburg was the only place that had lawyers or police officers, or people that would listen to you?

A. No, but I have humiliation from this, and I didn't want to talk about it. I wanted to bury it, to cover it up, because it wasn't doing anything but tearing my life worse apart, when nobody—when you go to everybody and they just turn you away, and they just tell you that they believe you, but they can't do anything.

Q. Who was it that told you that?

A. They did not tell me personally, they told a friend of mine.

* * * * *

[435] Q. You thought he had power over the FBI?

A. I didn't know. I was afraid to go to anyone at first.

Q. What I am asking you, Ms. Archie, is don't you remember in 1985 or '86 that the FBI, through their investigation, deposed the sheriff of Dyer County?

A. I remember newspaper articles. I was away at school at the time. I wasn't in Dyersburg.

Q. Did you have friends in Memphis that you could talk to about it, or elsewhere?

A. Friends in the legal community or friends—

Q. (Interjecting) Or in the law enforcement community or elsewhere?

A. As I said, I was humiliated. I didn't want to talk to anybody else because I knew I would be turned away,

so I didn't go to anyone. I just stayed back and tried to deal with it inside.

Q. Well, please explain to me why you went back up there the second time?

A. Because my mother followed me around the house. And she kept saying, "When your daddy gets home and he finds out that the judge has called you and knows where a job is, he is going to get mad, he is going to be furious." "He is going to kick you out of the house." And I have been kicked [436] out before, but not with my daughter. And I was trying to protect her and myself, and I knew if I got him mad that he might take her anyway, that it might be a vendetta, and I don't want to lose my daughter. (Crying)

Q. Are you saying you are more afraid of your mother than of Judge Lanier?

A. I am not saying I am more afraid, but I am very afraid of my mother, yes (crying). She has had a lot of power over me through my life. And she has made me do things that I am not proud of.

Q. The same word "power" again?

A. Yes.

Q. Did you ask your mother, "Come on Mom, let's go up to Judge Lanier's office and see what he wants"?

A. No.

Q. Did you go by the juvenile office and say, "Lisa Golden, how about going with me up to the office, Judge Lanier has got an interview that he wants to tell me about"?

A. No.

Q. Do you know Rob Hammon?

A. Yes, I do know Rob (crying).

Q. One of the juvenile officers.

A. But he was not working there then.

Q. Well, who was?

A. Sandy Sanders and Lisa.

* * * * *

[443] Q. But you had asked him on the phone for the name?

A. Uh, huh.

Q. And you stated he said, "No, I can't give it to you on the phone, come on over." Now, if he is what you say he is, wasn't that an open book to tell you what was going to happen?

A. Yes, it was. And like I said, I tried to get myself seated in another seat. I tried to keep it where my hand would be right there by the door where I could swing it open and slide right out and get away, because I parked even right there by the steps where I could just run right down the steps right out by the door coming into the hallway and down the steps.

Q. And you are telling this jury that you expected it to happen, you say?

A. I expected to be able to get the answer to my questions of who it was and get out of there and protect myself.

Q. You had not gotten that answer over the telephone so why would you expect him to give it to you in person? Why did you think he said come down there in person, if what you [444] told the jury—

A. (Interjecting) I was afraid not to go. If I didn't go, then he would have a reason to believe I had told somebody. Maybe he would have thought that I was out there running my mouth and he would have gotten mad. And he is very vindictive (crying). He can make your life miserable. And without my daughter, my life is miserable (crying).

Q. But that misery that you have now has nothing to do with him or anything you say, does it? It has to do with your voluntarily giving up custody of your daughter to a woman that you say is mean to you?

A. It has to do with getting through this trial, and getting here with me. But at the time—this is a very emotional time for me. And it is not very good for a small child to be around someone that sometimes sits in

a chair and for no apparent reason just starts bawling. And I can't raise my child like that being a neurotic person. I am trying to get through this, get over it, and get her with me where she belongs (crying).

Q. Didn't you in fact get very angry at Judge Lanier because he wouldn't sign the voluntary custody transferring to your mother?

A. No, I did not.

Q. I never asked him to. I tried to stay away from that man after that. I don't know what you are talking about.

[445] Q. When the FBI first came to you, what did they ask you?

A. They asked me if I knew Judge Lanier. And I told them yes. And they asked me had I had a case in his court, and I said yes. And they asked me if I knew anything about other people coming forward and saying things that he had done to them. And I explained what I did know.

Q. Did you explain to them the things that you have testified to here today?

A. Yes, I did. I was going into that. I told them then that he also had done some things to me. And they asked me to explain and I did.

Q. On the second occasion you described where you finally got the name of the potential employer, and it was Dr. Warner; correct?

A. Yes.

Q. And you went and got the job with Dr. Warner?

A. Yes.

Q. Got it that day?

A. Yes.

Q. Started working that day?

A. Yes, I did.

Q. And how long after that were you at lunch with Dr. Warner?

A. You mean how many days?

[446] Q. How many days and times?

A. How many times? How many frequent times?

Q. How long did it take you before you were going to lunch with Dr. Warner?

A. It was probably within a week.

Q. Were you in fact having a romantic relationship with Dr. Warner at that time?

A. Yes, within a week.

Q. This is the man that you told Mr. Parker that you were in love with?

A. Yes. I was at a very bad point in my life and it wasn't—it was romantic in the terms of he was a very dear friend, he was a good shoulder. My father and I, the day before I started work—not the first day that I just went, but there was a day in between that I worked that afternoon after the interview. The next day, I took off to baby-sit for a friend. My father that night got mad because I didn't go straight to work, and we had a physical fight. I went back to work the next day and Dr. Warner asked me what was wrong, and I told him about the physical fight with my father.

Q. Within a week you were having a physical relationship with Dr. Warner?

A. Within a week it was verbal and later it became physical, yes.

[447] Q. And that is the gentleman that you went to Nassau with?

A. Yes, the gentleman that took me and Judge Lanier, who paid both of our ways, right?

Q. Who was it?

A. Dr. Warner paid our way.

Q. You and Judge Lanier went?

A. Right.

Q. Did you ever tell Dr. Warner about this?

A. Yes, I did.

Q. And he still put you in the company of this man?

A. He wanted to say something to Judge Lanier but I begged him not to. I begged him to not get him mad

at me, not to let him know I had opened my mouth to let me just stay as far away from him as I could and for him to stay with me and protect me.

Q. This was before you went to Nassau?

A. This was talked about before I went to Nassau.

Q. So, he goes down and pays the plane fare for this man, your attacker, and puts him up in a hotel room right next to you with connecting doors, doesn't he?

A. I don't remember there being connecting doors.

Q. Right next to you?

A. Right next to us, right.

Q. And then goes off during the daytime—Dr. Warner [448] went down there to see about a business deal, is that correct?

A. Correct.

Q. Correct? A box company.

A. Yes. And he asked Judge Lanier to come along for advice.

Q. And he was gone most of the day and Judge Lanier was there by himself at that point?

A. Judge Lanier was with him.

Q. Well, he was not with him when he came out to the beach where you were that time?

A. But I had asked Dr. Warner to let me go to the beach by myself. He was not away from the motel, he himself was in the motel. When they went off to the box company without me, they went together and I was left alone then, and I felt safe because he was with Dr. Warner.

Q. But you are saying Dr. Warner let him get away, he slipped off with Dr. Warner somehow and came running back to you?

A. He came to the beach, right, when I was reading a book.

Q. And Dr. Warner wasn't there?

A. Right.

Q. And then after you came back to Dyersburg, where did you carry on your love affair with Dr. Warner?

[449] A. We went up to the penthouse that Dr. Lanier had.

Q. Judge Lanier's apartment, correct?

A. He had given Dr. Warner a room that Dr. Warner had fixed up, and Dr. Warner [had] a key that we went on our schedule.

Q. And many times you went up there and Judge Lanier was there and you would have been waiting for Dr. Warner?

A. No, I did not. I never entered the apartment without Dr. Warner there. I was not with a key, I was with no way in that place without Dr. Warner first being there to answer the door or to go in with me. And I only ran into Judge Lanier twice there, and both times Dr. Warner was strictly by my side holding my arm and escorting me out. We never stopped and talked and carried on conversations, or did anything. We were completely going in and out.

Q. At Judge Lanier's apartment, did you eat lunch together on occasion?

A. Dr. Warner and I did, yes.

Q. But not Judge Lanier?

A. No.

Q. Did you go out with him and eat dinner or lunch with him on occasion?

A. With who?

Q. Judge Lanier and Dr. Warner.

A. Dinner or lunch?

Q. Yes.

[450] A. I met them, meaning them, a whole group of people. There would be Charles Kelly, Bob Malar, Steve Davis, and several other attorneys. Bubba Agee and one of his friends. They would all be at a table at Capasa and Dr. Warner would ask me to join them, and I would. I would join Dr. Warner and the other people were already there. I never directly ate with him at all.

Q. How long did your situation with Dr. Warner last, your romantic situation with Dr. Warner?

A. It ended whenever—when my parents kidnapped—

MR. PARKER: Your Honor, can we approach the bench?

THE COURT: Yes, sir.

* * * * *

[Testimony of Patty Mahoney]

[466] [Ms. Mahoney]: A. Yes, I met with him in his office.

[Mr. Moskowitz:] Q. At the courthouse?

A. Yes.

Q. And was this for the purpose of interviewing for work with Judge Lanier?

A. Yes.

Q. Did Judge Lanier describe your duties and responsibilities that you would have if you were to be hired as a secretary during that interview?

A. Yes, he did.

Q. What did he say to you about that?

A. That I would set appointments or hearings with the attorneys in town and some light typing, answering the phone. That was all.

Q. What was your understanding at that time as to who would be in a position to hire you for that job?

A. The judge.

Q. And what was your understanding as to who would be your supervisor once you were hired?

A. The judge.

Q. And what was your understanding as to who would have the power to fire you once you got that job?

A. The judge.

Q. Now, how would you—let me ask you this. Would you describe the conversation with Judge Lanier at that time as [467] being basically professional and cordial?

A. I think it was a friendly interview. It was inappropriate when the interview ended because—

Q. (Interjecting) Well, what happened. Let me ask you, how did the interview end?

A. Um, after we talked about the job for a minute, or for a while, I stood up to leave. He stood up and walked around his desk and hugged me.

Q. What kind of hug was it?

A. It was a friendly hug.

Q. Nothing dirty or bad about it?

A. No, huh, uh.

Q. What was inappropriate about it?

A. It wasn't the right place to do that. I did not feel comfortable with it. I knew that it was not the right thing to do, it was inappropriate.

Q. Had the judge ever hugged you before?

A. No. We were not friends.

Q. Had anything led up to his hugging you?

A. No.

Q. What did you do or how did you react after the Judge hugged you like that?

A. I probably giggled. And he said, "I hope you don't mind that, we are very friendly around here." And I said, "I guess not."

[468] Q. Did anything else happen during that interview?

A. No.

Q. Were you hired on the spot that day?

A. No. He told me to come back the next day and type. He wanted to see if I could type.

A. And did you do that?

A. Yes, I did.

Q. Okay. Returning to taking this typing test the next day, did you have some concerns?

A. Yes, I did. I was worried because of the hug, I didn't think that was the right thing to do.

Q. Did you have some sort of plan in mind as to how you might handle the Judge on the day you went back for the typing test?

A. Yes. I was going to have a talk with him. I had planned to talk to him about it and get everything upfront.

Q. Now, when you returned to the courthouse for the typing test, what part of the courthouse did you go to?

A. I went upstairs to the—I don't know if it is the child division office or exactly what it is called.

Q. But it wasn't back in the Judge's chambers?

A. No.

Q. And did you have an opportunity to meet with the Judge that day?

A. Yes, I did. He came upstairs to visit with me for a [469] minute.

Q. And did you engage him in conversation as you had planned?

A. Yes, I did.

Q. What did you tell him?

A. I told him that if he had an ulterior motive for hiring me, not to do it, I was not interested.

Q. You made that pretty clear to him?

A. Yes, I did, I was adamant.

Q. And what did Judge Lanier say to that?

A. That he had no ulterior motive for hiring me other than as a secretary.

Q. Did you believe him?

A. I still felt uneasy.

Q. Something about the way the Judge acted towards you that day that made you feel uneasy?

A. Yes.

Q. Were you ultimately offered a job with Judge Lanier following your typing test?

A. Yes.

Q. Did you take it?

A. Yes.

Q. Despite the fact that you were feeling uneasy?

A. Yes.

Q. Why?

* * * * *

[472] Q. Now, you say you worked for the Judge for about two and a half weeks or so?

A. Yes.

Q. And you quit?

A. Yes.

Q. Why did you quit?

A. Because it became clear to me that he was not going to leave me alone.

Q. What did he do to you?

A. He touched me—something happened every day. There was a hug, or there was a touch every day.

Q. You say a touch every day. Where would Judge Lanier touch you?

A. My breast and my bottom.

[473] Q. Your breast and your bottom. How would Judge Lanier touch you every day on your breast and bottom?

A. Uh, you know, I think the first couple of days, or maybe just the first day, it was kind of like an accident. And I wanted to think that that is what it was although I had my doubts. But the second day, it had already escalated to it was a firm touch.

Q. I know this is embarrassing for you.

A. Yes.

Q. But you do need to describe for the jurors what you mean by a firm touch?

A. Uh, well, it was with the open part of his hand, the palm of his hand.

Q. And how would he place the palm of his hand on your body?

A. Well, just firmly. Just firmly. It was there, there was no mistake.

Q. And where on your body did he do that?

A. My breast and my bottom.

Q. Did you want him to do that?

A. No.

Q. Did you ask him to do that?

A. No.

Q. Did you do anything to invite him to do that?

A. No.

[474] Q. How did you react when he did that?

A. I moved very quickly away from him.

Q. Did you say anything to him?

A. One day I might have been there three or four days by this point. He did something, I don't know which one.

Q. Did he touch your breast that day?

A. Either my breast or my bottom, I don't remember which.

Q. In the way that he had always been doing?

A. No, it was a little bit more aggressive that day.

Q. How do you mean more aggressive?

A. Well, it was—there was more of a squeeze instead of just placing his hand there.

Q. He actually squeezed your breast?

A. Yes. Yes.

Q. So, it wasn't a touch then, exactly?

A. Not really, no.

Q. It was more of a grab?

A. He never just grabbed me, it was always—he was standing beside me and he would reach over and do something.

Q. Would there ever be any warning before he would do that?

A. No. No, but I knew that I did not want to be alone with him, that something was going to happen. I tried to avoid that.

[475] Q. Now, you were saying on the day that he actually applied squeezing pressure on your breast, you finally said something to him and you said something on that day?

A. Yes, I did.

Q. What did you tell him?

A. I said to him—I walked very quickly away from which ever room we were, and it was probably in the storage room. But I walked very quickly back to my office and he followed. And he sat down, and I said how can you do this to me, you don't know me that well, for all you know I could run out of here screaming about what you just tried to do to me.

Q. And how did the Judge respond to that?

A. He said, "I don't think you will do that because it would hurt you more than it would hurt me."

Q. Was he joking?

A. No, he wasn't joking.

Q. Did you believe him?

A. Yes.

Q. How could it be worse for you rather for him if you said something about him?

A. Okay. Well, as I said before, when I was growing up, I heard about the Laniers. They had always been in power. I knew that. And I was afraid that nobody would hire me if I told people what he had done.

[476] Q. Why would nobody hire you if you told people that the Judge was grabbing you?

A. I would probably be viewed, I thought, as a trouble maker, or somebody that was just angry about something.

Q. Were you concerned at all about what the Judge might do?

A. What do you mean?

Q. If you had told anyone?

A. Oh, yeah. Oh, yeah. I thought that he would—

Q. What was your concern about?

A. Well, I knew or thought that he would tell people—if I applied for another job and somebody called me in for a reference, that he would say bad things about me and I wouldn't get a job.

Q. And so it would go worse for you than for him?

A. Yes.

Q. After you told him this and discussed this with him about going to someone and complaining about it, and his response to you that it would go worse for you, did the touchings and the grabbings stop or did they continue?

A. They continued.

Q. On a daily basis the whole time you worked there?

A. Yes.

* * * * *

[479] Q. You say the Judge was angry, did he have a pretty bad temper sometimes?

A. Yes.

Q. Did the Judge want to do more with you than just to touch you and grab you or your breast and buttocks?

A. Yes, I think so.

MR. EMMONS: I object to the form of the question, Your Honor, and also the answer. We've got a leading question and then we have got an opinion answer.

THE COURT: Do you want to rephrase that question. I'll sustain the objection. Ladies and gentlemen, disregard the last question and answer.

BY MR. MOSKOWITZ:

Q. Did you have any indication from the Judge that he wanted to do more with you than just grab you on the buttocks?

A. Yes.

Q. What indication did you have?

A. Well, he called he at my home. He invited me on trips to the Bahamas, and he said to me that, "If you will sleep with me, you can do anything you want to. You can come in to work any time you want to, you can leave any time you want to."

Q. How did you handle that when he would bring up these invitations and enticements to you, how did you deal with it [480] generally?

A. As if it were a joke, that he wasn't serious when he said that.

Q. Why did you handle it that way?

A. Because it was easier to do that. I did not want to make the Judge angry.

Q. Did there come a time, Ms. Mahoney, when you decided to just call a halt to this and end it, stop it?

A. Yes.

Q. What did you decide to do?

A. I decided to quit.

Q. Did you notify the Judge of your decision to quit?

A. Yes, I did. I called him from my home. I called him and told him that I was going to quit.

Q. Did you really want to quit?

A. No, huh, uh.

Q. Did you have really some other hope or purpose in mind when you called on the phone and told him you were going to quit?

A. He asked me why, and I said, "You won't leave me alone." And I hoped that when I said that, he would say, "If that's all, if you really mean that then I'll leave you alone." But that is not what he said.

Q. Now, the next day, did you go back to work?

A. Yes, I did.

[481] Q. Had you changed your mind about quitting over night?

A. No, but I still had hope.

Q. What was your hope?

A. That I could talk to him and reason with him, and I tried to appeal to his sense of dignity, and honor, and integrity.

Q. How were you going to appeal to the Judge's sense of dignity, and honor and integrity, how were you going to do it, what were you going to do?

A. I said this, "You have a wonderful position. You are in a job, you have so much power and—"

Q. Now, you were going to tell him this, is that what you are saying, you were going to engage him in conversation?

A. I had already—yes. Yeah, I was going to tell him that.

Q. After one of those meetings, you went back to work the next day?

A. Yes. I had already talked to him about dignity and honor, but that didn't work either.

Q. Now, the next day when you returned to work, did you in fact have a conversation with the Judge about all of this?

A. Yes, I did.

Q. Where did that conversation take place?

[482] A. It took place in his chambers.

Q. And what was the purpose of this meeting, from your point of view?

A. Again, I wanted to keep my job, but I wanted him to leave me alone.

Q. And how were you going to do that, what was your plan?

A. On how to keep my job?

Q. Yes.

A. To appeal to his sense of honor again.

Q. And did you do that?

A. Yes, I did. I was distraught, you know, I broke down and cried.

Q. Are you pretty emotional?

A. Yes.

Q. Did the Judge see you crying?

A. Yes.

* * * * *

[485] Q. Did you continue to work for the Judge several more days after that?

A. Yes. I told him the night I called him to tell him I was quitting, that I would stay there for another week.

Q. And did you keep that promise?

A. Yes, I did. He told me just a couple of days after that that the secretary who was there before me was going to come back to work for him.

Q. What was the purpose of working several more days after that incident, why did you make that offer?

A. Because I needed the job, and if I could hold on a couple of more days, or—you know, I really thought that after I told him that I was going to quit that he would be frightened of me.

[486] Q. Frightened of what?

A. That I would tell people what he had done or I would report him to somebody. So, I thought I had a little—safety net.

Q. Did you in fact tell anybody?

A. Tell him—

Q. Anyone in authority? Did you go to the police?

A. No.

Q. Or the FBI?

A. No.

Q. Or the District Attorney's office?

A. No.

Q. Did anything happen the last several days that you worked for the Judge after you had quit and stayed on, anything happen between you and he?

A. No.

Q. Now, after you left the employment of the Judge, were you able to find another job quickly?

A. No. No, I decided to go back to school.

Q. And before you decided to go back to school, while you were looking for another job, did you telephone the Judge for a job reference?

A. Yes, I did. I had a friend in Nashville and I thought that that might be a good move for me. And I called the Judge to see if he would give me a reference, if I [487] decided to apply for a job in Nashville.

* * * * *

[492] [Mr. Emmons:] Q. And where was that?

A. I'm working at Maurice's, a clothing store in Dyersburg, part time.

Q. Part time?

A. Uh, huh.

Q. A retail establishment?

A. Yes.

Q. Did I understand you to say that you basically sort of manipulated the Judge there at the end by trying to keep him on the good side of you?

A. I guess so.

Q. In other words, you didn't tell him your true feelings?

A. No. No, I had—no, I got that straight with him, or tried to get that straight with him at the very beginning before I took the job. No, he knew how I felt about it.

Q. You said that you didn't want to burn any bridges, correct?

A. Right.

Q. And you felt like he had a lot of contacts to help you?

A. Yes.

Q. So, you wanted to keep the contacts, you didn't want to build the bridges, you didn't want to make him angry, so [493] you continued to talk to him?

A. I did not want to batter his ego and make him mad.

Q. I'm not talking about the physical touching that you have alleged, I know you say you disapprove of that. I'm talking about even after all of that, you continually—you carried on a relationship further with the Judge?

A. Well, I wouldn't call it a relationship at all. There were a couple of phone calls, that's it.

Q. Well, didn't you talk to him about some very vivid things, about relationship with men?

A. No. I never had an intimate conversation with him about my sex life.

Q. I didn't really mean your sex life, I meant about who you were dating, why you were dating, where you were going, this type of thing?

A. There was never any sex talk about me and what I was doing. As a matter of fact, I told him that I was a recycled virgin.

Q. Maybe I need to make it clear again. I am not talking about sex talk.

A. I don't understand what you mean.

Q. I'm talking about who you were dating?

A. Oh, yeah. Okay.

Q. Where you were going?

A. Yeah.

[494] Q. You called him about dates with Mr. Riley, here, that brought you up today, correct?

A. Discussing our platonic friends, I believe he would testify to that.

Q. That's is what I said, I wasn't talking about sex talk?

A. Yes. Yes. We did have personal conversations, sure.

Q. And you talked about going to the ball game with him, and you would see him where you all ate, and when he came by, just pretty long conversations about little social details, right?

A. Uh, huh, yes.

Q. Friendly chatter?

A. Yes.

Q. And you say now you were doing this just to manipulate—or you didn't want to burn bridges?

A. Right.

Q. You wanted a recommendation?

A. Yes.

Q. You in fact were kind of intimate, weren't you, you weren't expressing your true feelings?

A. Oh, you know, I think most Southern women grow up, or most women, I don't care where you live, with the idea that if you are divorced men are going to

come onto you. You learn how to handle it pretty quickly and pretty young. And [495] you do that by joking and caring on, light conversation, pander.

Q. Did you tell him about guys that wanted to date you that you didn't want to date because they were just interested in sex?

A. I don't remember that.

Q. Do you remember someone named Johnnie that you talked to him about?

A. Um, yes.

MR. MOSKOWITZ: Your Honor, may we approached the bench?

THE COURT: Yes, sir.

(Whereupon, counsel approached the bench, and the following occurred out of the hearing and presence of the jury, as follows:)

MR. MOSKOWITZ: Mr. Emmons is getting ready to get into a prior sexual situation with this witness, which would be in contravention of the Court's ruling not to do [496] so.

MR. EMMONS: To the contrary, I was going to ask about a guy that she wouldn't date because—I have the name in my notes. It is my understanding it is one that she had not had any relationship with, but that she intimately talked to the Judge about why she didn't. When I say intimately, just a general conversation about it.

MR. MOSKOWITZ: Well, I think he had been allowed to get into the fact that she has had some personal conversations with the Judge about matters like that in general. And now we are getting into an area that is going to be extreme[ly] embarrassing to her, because it is going to lead to her having to talk about a relationship that she had. It is extremely embarrassing for her and has nothing to do with this case.

THE COURT: What is it that you are going in to?

MR. EMMONS: It was a person that she told Judge Lanier that she wouldn't go out because he was just a cunt handler and a pussy kisser.

MR. MOSKOWITZ: What has that got to do with this case?

THE COURT: Wait a minute gentlemen, I believe he is handling it now, let's let him handle it.

MR. MOSKOWITZ: My point is that she is having intimate conversations with Judge Lanier that she says she [497] is trying to get away from.

THE COURT: I will allow you to ask her if she used that word in conversations with the Judge. I will not allow you to go into a relationship or to describe a person, or to ask her about her other relationships with people. Is that fairly clear?

MR. EMMONS: Yes, sir. And Judge, when I ask just the first name of her—

THE COURT: Just leave the names out of it. I don't see how the names are possibly relevant. What you are trying to do is establish and develop conversations about a personal nature and you can do that by going into the conversation itself without dealing with the relationship.

MR. EMMONS: While we are here to save another trip back over here, there is something else I'd like to proffer. We have evidence that she told the Judge about her former husband and her, as I understand it, and how she lured him down to Dyersburg, placed a tape recorder under the bed, engaged him in intimate sexual acts and then used the tape recording of it to attempt to blackmail him into paying child support.

I think this is relevant for several reasons. Number one, it is a deceitful act, it is blackmail. Number two, she has complained about—

THE COURT: When are you talking about?

[498] MR. EMMONS: I am talking about at a time after she moved to Dyersburg, which would have been

right after the same frame of time, because he came to Dyersburg to see his children, so, it would have been after she moved to Dyersburg when she told him. And she told Judge Lanier the details of how she had done this and how she had the intent to use it to blackmail him into paying child support.

I think it is proper not only to the extent she was talking about needing more money, plus it was a deceitful action.

Also, she has said several times how she talked to Judge Lanier about dignity and honor. And I think this is contrary to these modelistic overtones that she has exhibited from the witness stand, and that the jury has a right to the probative of it, whatever that might be.

THE COURT: Do you want to be heard?

MS. MOSKOWITZ: Well, as to the last part, there are no logical inferences or connection between her appealing to the Judge's honor and dignity and any events which she may have in connection with her ex husband. In respect to the other argument that somehow that evidences her untrustworthiness, whatever relevance it might have is clearly prejudicial. The inflammatory nature of that testimony would be so prejudicial. It is cumulative in term of evidence. It is inflammatory, it is prejudicial. [499] It goes right to the heart of 403 prohibition against getting into prior sexual acts, which is exactly what he is trying to do.

THE COURT: This appears to be past sexual conduct.

MR. MOSKOWITZ: Or past sexual conduct, and it involves a husband and ex wife, and we all know no one knows what goes on with two people.

MR. EMMONS: Your Honor, the relevant single fact that she would set him up using and abusing him that way, shows a true trait of character that this jury needs to know about to properly evaluate this witness. I don't think I could show if I just wanted to show it that she was sleeping with her ex husband.

THE COURT: Are you saying that she had a conversation with the Judge in which she stated she was going to use this tape recording to get an increase in child support.

MR. EMMONS: Let me be sure I'm right on that, Judge.

THE COURT: Okay.

(Mr. Emmons conferring with defendant.)

MR. EMMONS: I just wanted to be sure. That was my understanding, that she hold him that she was going to use it to get an increase in child support. She called his [500] home and put it on his recorder.

THE COURT: Called whose home?

MR. EMMONS: The coach's home, her former husband's home.

THE COURT: And put what on the recorder?

MR. EMMONS: Recording their sexual taped tape that she was using. In other words, she was—

THE COURT: (Interjecting) How is that blackmail?

MR. EMMONS: She had a boyfriend, Your Honor—I mean, pardon me, he had a girlfriend that she said I'll let the girlfriend know. And girlfriend, in fact, did know and her ex husband's girlfriend broke up as a result of this. She did ruin him. She threatened to and she did.

THE COURT: I don't know if that qualifies as ruining him. I don't mean to make light of it.

MR. EMMONS: I understand.

THE COURT: That might be a little bit of an exaggerated stand.

MR. MOSKOWITZ: I just don't see how that is relevant to anything in this case. I think he has made his point, that there were personal conversations between the two. That makes his point. Now, he wants to put on specific instances and that is only offered for the purpose to inflame the jury.

[501] THE COURT: Well, he is indicating that it is being offered for another purpose. I appreciate your disagreeing with him on it.

Mr. Emmons, that is a little bit closer than some of the other proffers you have made because if indeed those acts occurred, it might indicate some deceit, but given the circumstances you have indicated, a former husband and a wife discussing child support, having sexual relations, I am inclined to think that it has very little probative value. And what probative value it may have is substantially outweighed by the undue prejudice that it will create in this case.

MR. EMMONS: Let me just be sure for the record that I have properly explained it to the Court. Her former husband, who was a coach, football coach at Murray State University—I believe if you'll remember she has testified that she moved up to Kentucky and then after the divorce moved back to Dyersburg.

THE COURT: Uh, huh.

MR. EMMONS: He came to Dyersburg to see his children. The former husband had a relationship with a television reporter from Paducah, Kentucky, a close relationship. She lured him into a sexual encounter in Dyersburg, that is, this witness lured her ex husband into a sexual encounter in Dyersburg, surreptitiously tape recorded [502] it, and then black mailed him. Said she was going to let the girlfriend in Paducah know if he didn't increase the child support, and in fact did let her know, and it broke up the relationship.

THE COURT: That is what I understood you to be proffering and my ruling that I indicated earlier still stands.

MR. EMMONS: All right. Can I ask her about that as far as the type of intimate conversation she had with the Judge?

THE COURT: You can ask about her conversations, whether or not she had a conversation with the Judge

about her sexual relationship with her ex husband, but you may not go into details that you just described to me?

MR. EMMONS: All right, sir. I can ask her if she used the word "cunt" in describing it?

THE COURT: Yes.

MR. EMMONS: All right. Can I ask if there is anything else while we are still up here.

THE COURT: Yes, sir.

(Mr. Emmons conferring with defendant.)

MR. MOSKOWITZ: I understand the ruling is that he cannot get into anything more concerning other men.

THE COURT: Well, I think I have already [503] indicated we are not going to discuss relationships between her and other men, but he may inquire into the nature of the conversation she had with the Judge for the purpose of establishing the relationship that she had with the Judge.

MR. EMMONS: That is what my understanding was.

(Whereupon, counsel returned to the counsel table, and the following occurred in the hearing and presence of the jury, as follows:)

MR. EMMONS: May I proceed, Your Honor?

THE COURT: Yes, sir, please do.

BY MR. EMMONS:

Q. All right. Ms. Mahoney, a couple of more questions. In regard to intimate conversations with the Judge that I've talked about, did you not at one time, in referring to someone who you had talked with that wanted to date you, you referred to someone that you weren't going to do it because he was just a cunt handler?

A. Probably.

[504] Q. You told that to the Judge?

A. Yes.

Q. In one of these conversations.

A. I could have. I don't remember, but I have used that phrase before.

Q. Did you not also discuss some of the intimate details of your life with your former husband?

A. I don't think so, no.

Q. You don't think so?

A. No, I don't remember doing that at all.

Q. Would you not have remembered if you did?

A. No, I think I would remember if I had. I don't think I would have discussed that with him.

Q. You don't think you would have discussed it?

A. No.

Q. Your not denying it?

A. No. I don't remember ever discussing it with anybody.

Q. In regard to your former husband coming to Dyersburg to visit his children and what details went on of that situation, relating to child support?

A. Oh. Yeah, I did tell him one time that my ex husband made passes at me when he came to pick up the boys.

Q. Did you explain to the Judge that—did you ever talk to him about whether or not you submitted to any of [505] those passes for any purpose?

A. From my ex husband?

Q. Yes.

THE COURT: The question is not what you were doing with your ex husband, but with respect to what conversations you had with the Judge about those relations, if any.

BY THE WITNESS:

A. I don't remember.

Q. You don't remember whether you talked to him about it?

A. No.

Q. On one occasion that you have alleged that he engaged in these conversations with you about taking off as much time as you wanted to take off, if you would be nicer to him, or something like that. I forget exactly how you put it, but that was the gist of the conversation, right?

A. Yes. If I would sleep with him—

Q. That he would give you more time off?

A. I had never asked him for any time off, but yes, I could run the office pretty much is probably what he said.

Q. Did you in fact tell him in response to one such conversation, I am just interested in the money, if you will come up with a lot of money?

A. Jokingly, yes.

[506] Q. You said that?

A. I said, "Your crazy." I said, "I'm not interested in trips, I am interested in the money," and that was in my office where I felt very safe.

Q. Told him to come up with a lot of money—if you will come up with a lot of money, is that what you said?

A. Probably.

Q. Well, would you like me to show you your grand jury transcript?

A. No, I believe I said that. I remember the conversation, uh, huh.

Q. And I believe you also said—

A. (Interjecting) That was said in gist [*sic*: jest], I certainly didn't mean it. He said it could be arranged, and I said, "Your crazy."

Q. Said in gist?

A. I said it in gist, yes. And he said the money could be arranged, and I said, "Your crazy."

Q. Was this the man that you say had been sexually assaulting you every day, joking with him like that?

A. Yes, because that is what he liked to do. He liked to talk about sex.

Q. Now, did I understand you to say that one reason you kept going back day after day after day is because that you were afraid nobody would hire you if you didn't; is that [507] right?

A. If I didn't what?

Q. If you didn't go back and keep working for him, you were afraid that if he got mad at you nobody else would give you a job in town?

A. No, if I ran out and talked about what he—about the sexual harassment, nobody would give me a job.

Q. Well, Mr. Moskowitz was asking you about why you kept putting up with this, and you said because he was so powerful, I was afraid nobody would give me a job if I quit, that is why I kept going back; right?

A. I kept going back, I was there three weeks.

Q. Yeah. But you say you went back day, after day and he assaulted you every day there?

A. Yes.

Q. And did you not say that the reason you didn't just quit is because you were afraid you'd be on his bad side and nobody would give you a job?

A. Yes. I left the office with—everything was okay when I left the office, he wasn't angry at me.

Q. And the reason you kept going back is you were afraid nobody would give you a job? Let me ask these questions.

A. If I talked.

Q. At the grand jury, once you—Question: "Once you finally quit, you were concerned about getting another [508] job?" Answer: "No, not really."

MR. MOSKOWITZ: What page are you on?

MR. EMMONS: Page 10, line 11.

THE COURT: Give him an opportunity to find that, please.

MR. EMMONS: Yes, sir.

BY THE WITNESS:

A. No, I kept my mouth shut, I didn't talk about him. I thought everything was okay, and I felt free to call and ask him to help me get another job. I thought if I stormed out of the office for something that he had done to me, then that was it, I had cut my throat.

Q. You really weren't concerned about getting another job?

A. No, I thought I could get another job.

Q. Ms. Mahoney, is it not a fact that you had trouble fulfilling the requirements of that job?

A. No, I didn't.

Q. Are you saying that you didn't have trouble just with simple things like the proper way to answer the phone, picking up the mail, setting the cases?

A. The Judge was very angry if I asked anybody, "May I tell him who is calling." He did not want me to ask who was on the phone, and he did get angry at me about that one. But, you know, when you go to work every day and you expect [509] something to happen, you are nervous and it is hard to think, if that is what you are referring to.

Q. Well, what about picking up the mail, what was the problem picking up the mail?

A. Nothing. I think I forgot a couple of days.

Q. A couple of days?

A. Uh, huh. I don't even remember ever getting the mail, maybe I didn't.

Q. What was the problem with setting cases?

A. Nothing. The attorneys gave me compliments. They were glad—they told me they were glad that I was there.

Q. I'm sorry, say that again, if you would?

A. The attorneys gave me compliments. They told me—several of them told me that they were glad I was

there. You know, I was there a very short time, I didn't have the job down pat, but it was a very easy job.

MR. EMMONS: I believe that's all, Your Honor. Thank you.

THE COURT: Redirect?

MR. MOSKOWITZ: A couple of questions, Your Honor.

[510] REDIRECT EXAMINATION

BY MR. MOSKOWITZ:

Q. Mr. Emmons asked you about some of the joking that went on between you and how you responded to him—to his sexual comments, and you would joke about it. Did the joking stop the abuse he was subjecting you to while you were working there?

A. Oh, no. No.

Q. When you told him that you might go to the police or the authorities, did that stop the abuse for the two weeks you were working for the Judge?

A. No, he seemed confident that I wouldn't do that.

Q. You said you tried to keep things calm and happy while you were working there?

A. Right.

Q. Not to rile him up in any way?

A. No, I didn't want him angry.

Q. Did that stop the abuse for the two weeks you were working there?

A. No.

Q. How did you finally stop the abuse you were getting while you were working for Judge Lanier?

[511] A. I quit.

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TRIAL TRANSCRIPT

(December 8, 1992)

* * * * *

[Testimony of Fonda Bandy]

[809] [Ms. Bandy:] A. Presently I am employed for a federal program called Drug Free Public Housing.

[Mr. Parker:] Q. How long have you been employed through that federal program?

A. I started last year in July.

Q. Prior to that, how were you employed?

A. I had a business of my own.

THE COURT: I'm sorry, I couldn't hear you.

THE WITNESS: I had a business of my own.

BY MR. PARKER:

Q. What do you do with the drug free program?

A. Presently I am the [s]ite coordinator. The way that the grant is set up it is with a coalition. And the Dyersburg portion of the grant has the largest share of the monies appropriated, so I manage a two hundred and fifty thousand budget for the Dyersburg Housing Authority, which operates in five counties. We have different centers, learning centers and recreation centers, and we provide employment opportunities, tenant involvement opportunities, education and recreation for the tenants in public housing.

Q. Do you know David Lanier?

A. Yes.

Q. How do you know Judge Lanier?

A. I was introduced to him by a former business client of mine about four years ago and then I had a meeting [810] with him concerning the program.

Q. All right. Let me get to that. Tell us about this program that you had to have a meeting with the Judge?

A. Okay. When I started working with the program in July, one of the things that immediately came to my

attention was that there were several juveniles in housing that were before the court.

Q. Which court are you talking about?

A. Juvenile Court, Judge Lanier's court.

Q. Who is the Juvenile Court judge in Dyer County?

A. Judge David Lanier.

Q. Okay. Go ahead.

A. A lot of the problem that we had with the juveniles was that they were repeat offenders. And this wasn't the first time that they had been in court, and maybe they had been in court since they were nine years old, or whatever. A lot of the parents just do not have the educational levels that we do. They don't have a lot of job skills. It is very difficult for them to know how to handle their children or what would be best for their children, and so we have this never ending cycle.

After I had started working with one family in particular, I had thought that probably one thing that might help would be if we could implement a parenting program for the parents of these children in housing.

[811] Q. What do you mean by a parenting program?

A. Okay. There are different parenting programs at this time available. What it would do would be to introduce the parent to a positive guilt free type of take control with your children.

Q. When you say there are programs available, you mean these are programs that were already established in the Dyer County Area?

A. No, I mean the materials.

Q. What type of materials?

A. The manuals and the videos, and cassettes, that sort of thing. And you can get them where we call it undercutting, where you might be able to get a book at a regular reading level, or it will be undercut to like a fourth grade level, which is really good for the clientele that I work with.

Q. So, you were going to put on classes to teach parenting skills?

A. Correct.

Q. All right. Now, you said these were for juvenile offenders going through juvenile court, is that correct?

A. For the parents.

Q. For the parents of juvenile offenders?

A. Uh, huh, correct.

Q. How were you going to get these parents involved in [812] this class, how are you going to get them to come to the classes?

A. Okay. First of all, I want to back up a little bit.

Q. Sure.

A. There was one little boy in particular that I was working with who had a case in court at the time and he had gotten taken in. And so the mother was very very upset and she called me to her home. And as I had talked with the mother, I realized—she didn't know what restitution meant and she just did not understand the court system, et cetera, that she had to pay this fine that this boy had and he had to do that community service or, yes, they would come and pick him up. She just didn't understand all of this. And we got that explained, we established that she had to pay at least five dollars a month on the little boy's restitution charges. And because he had fifteen hours of community service work, I told her that I would be willing to supervise that at the Alvin Wood Center. It is a recreation center where I work. So, I had cleared this, first of all, with two juvenile officers at the time, probation officers, and that was Sandy Sanders and Lisa Golden, and we had all had a meeting and they thought it was a good idea.

In the meantime, I had talked to Paula Ledford about did she think that that would be a good idea. Paula is the Executive Director for the Housing Authority, did she think [813] that that would be a good idea to have a parenting class? I also take a lot of direction from Paula, as far as the programs that we try to create and

implement. Obviously, if she is not going to be supportive of it, there is not a lot of reason to go ahead and do it. But she thought that it was a very good idea and she said, I think that the first thing that you need to do is talk to Joe Boyd.

Q. Now, who is Joe Boyd?

A. At the time, Joe Boyd was the acting Attorney General for Dyer and Lake County.

Q. The Acting District Attorney General?

A. Yes, sir.

Q. The state prosecutor for Dyer County?

A. For Dyer County and Lake County.

Q. Okay. When you say acting, who was he filling in for?

A. James O. Lanier was sick at the time, and it was his office that because he was not able to fulfill his duties, Joe was in that position.

Q. Okay.

A. Joe is also the Chairman of the Board for the Dyersburg Housing Authority, and so that was kind of a double purpose there. The Chairman of the Board thought it was a good idea, plus being, you know, the Acting D.A. then, and we would just go from there. [814] So, Paula had called me and we went and met with Joe in his office. And he fielded several questions to me. He said, for example, the judge will want to know are you going to be able to vary your schedule. You know, you work primarily eight to five, but if a parent is working and they don't get off until five o'clock, how will you handle that. Well, we will make our hours flexible. He said the judge will want to know where are you going to counsel these people so that it will be private and no one else will know that they are there or will hear the conversation, and it was just that sort of thing.

And so I took notes and then Joe said approximately how long do you think that it will take, you know, to get this together. And I said, "Can you give me thirty days." And he said, "Fine."

Q. You needed to get a curriculum, and all of that, together?

A. Exactly, and a presentation for Judge Lanier for the parenting program that we wanted to do.

Q. What happened next?

A. Approximately thirty days later, I called Mr. Boyd back and told him that I was ready with the curriculum and the presentation, and I wasn't sure what to do at that point because I did not know whether he wanted to present it or whether he wanted us to both present it. And so did we need [815] to set down an appointment in our planners for us to both go and talk to Judge Lanier about this.

Q. What did you do?

A. And so Joe told me, he said, "Fonda, I think that you can handle that on your own," he said, "I have every confidence that you will be able to make a good presentation whether I am there or not, you go ahead and make the appointment." So, I called Judge Lanier and I made an appointment with him to talk to him about the parenting classes.

Q. Do you know what day you made that appointment?

A. It was September the 18th at 3:30 in the afternoon.

Q. September the 18th at 3:30. What year was that?

A. It was last year, '91.

Q. 1991?

A. Yes.

Q. How do you know that date?

A. On the same day, I also had a meeting—I was a guest speaker for the Kiwanis Club in Dyersburg, so I was there and then I had the meeting with Judge Lanier.

Q. Okay. Did you write it down any where?

A. I write everything down in a planner, I have a daily planner.

Q. Did you go back and check your planner?

A. Yes.

* * * * *

[832] Q. When he reached out and touched you in your vaginal area, how firm was it?

A. I don't know. I mean, it wasn't like he grabbed, he just went like this (indicating). And I don't know if that was to stop me or exactly what that motive was, but I just hesitated and kept on going for the door.

Q. What did you do next?

A. He said—I kept going for the door and he followed me and he said that he wanted me to come back and see him. And I told him that I didn't think that that would be possible, and he said that he wanted me to come come back and see him and if I did come back to see him, he would make sure that I had all of the clients I needed.

Q. For the parenting classes?

A. Correct.

Q. Now, after this day, how many clients—let me ask you, did you ever go back and see him?

A. No, I did not.

Q. Did he ever call you and talk to you about coming back to see him?

A. He had called the office concerning two clients, and it was the case that he had in court before I had the appointment with him, and that basically is what that was about.

[833] Q. Did he say anything that day about you coming to see him?

A. I don't remember.

Q. Did he say anything about a schedule of any kind?

A. I don't remember.

Q. Okay. Now, you said that he ordered two people to participate in a parenting class before you ever went to see him? Other than those two people, how many clients did he ever send to your program?

A. None.

Q. None?

A. None.

Q. And you never went and saw him?

A. No.

Q. Why didn't you go back and see him if he wasn't sending clients?

A. Because I did not want to have to go through again what I had already been through before.

Q. Did anything happen to the funding for this program?

A. At one time, we were really on the wire. As a matter of fact, in July we all received termination notices. And I am not sure exactly what happened, our staff went from a staff of five to a staff of one, and I was the only one retained.

* * * * *

[835] A. Correct.

[MR. EMMONS:] Q. Now, you are not connecting that in any way with any displeasure he had with you, are you?

A. Can you restate that, please?

Q. Yes. You are not connecting that funding problem with any displeasure he had with you, are you?

A. Any displeasure he had with me?

Q. He had no control over the funding of this program, did he?

A. Not that I know of.

Q. And so when you were asked that question and were getting that answer, it was implied that in some way he was controlling your program and giving you programs?

A. I didn't ask the questions, I just answered the questions.

Q. I understand. I just want to be sure that in responding to Mr. Parker's questions, that you weren't trying to leave that impression with the jurors. And now you say you were not, is that correct?

A. I said I didn't ask the questions, I answered the questions.

Q. Very well. As a matter of fact, the program was insulated in such a way so that Judge Lanier could have absolutely no control over it, could he?

A. The program is a federal program and it is funded by [836] HUD, and it is a coalition. My particular program is a coalition and there are ten housing authorities that are in the coalition.

Q. And HUD, of course, is a federal agency also?

A. Yes, sir.

Q. And the only thing you were seeking was more people to be in the program?

A. Correct. Clients for the program.

Q. Clients for the program. I'll come back to that in a minute, but let me ask you a couple of questions first. Have you talked to some of the other people who testified, some of the other victims in this case? I don't mean during the trial, but I mean prior to the trial?

A. I'll put it this way, I didn't know who the victims were until—and I still don't know who they all are, and no, if I were talking to them, I didn't know that they were victims.

Q. Did you make the statement that some of the women had a vendetta to get Judge Lanier?

A. I don't recall having said that.

Q. Did you tell that to Mr. Naifeh, or anything like that to Mr. Naifeh? Do you know Mr. Naifeh?

A. I have seen Mr. Naifeh before.

Q. Did he talk with you a few days ago about the case?

A. He called me on Saturday.

[837] Q. And did you tell him at that time something to that [e]ffect, that some of these women had a vendetta to get Judge Lanier?

A. I did not mean to imply, if I had said that, which I don't recall that I did, [they] were victims, because as I had stated before, I had not talked to any of the victims.

Q. It was somebody else that had a vendetta that you knew of.

A. Mr. Emmons, in a case like this, you lots, and lots, and lots of things, and no one knew for a long long time that I had any involvement. So, here I am up at the courthouse, where ever, Kiwanis Club, and this is something that people are talking about. Yes, I heard, lots, and lots, and lots of things.

Q. So that is where the term vendetta came from?

A. I don't know if I used that word.

Q. That was the implication to this gentleman?

A. Am I supposed to answer this?

Q. I guess maybe I didn't phrase it clearly. Was that the implication to Mr. Naifeh, the explanation that you have given just then?

A. I don't recall.

Q. Now, let me go back to the program, the federal program just a minute. A federally funded program through HUD, and you were interested in it because of your job with [838] the Dyersburg Housing Authority. Am I correct in that?

A. I am interested in the parenting program because—

Q. Was it connected with your job with the Dyersburg Housing Authority?

A. Yes. Yes.

Q. And exactly what was your job at the Dyersburg Housing Authority?

A. When I was hired originally in July, I was hired as an area counselor. And so we met and we talked with and counseled the various tenants. And then it was our

job to coordinate, to be a liaison between already established programs in the community. And so if the person needed—for example, if they wanted to finish a GED, then we would say these are the programs available, this is what you can do. If there were programs that were needed that was our first priority to connect them with programs already, you know, in progress. And then if they needed something additional or something that was not already being offered, for example, the parenting class, then we could go ahead and create and implement that program.

Q. When you say we, are you talking the counseling—

A. The staff.

Q. The staff?

A. Uh, huh.

Q. How many people made up the staff at the Dyersburg [839] Housing Authority, roughly?

A. By February of '92, there were five people on the staff.

Q. All right. Now, the parenting class, then, was something new at the time you went and talked to Judge Lanier about it?

A. Correct.

Q. It has nothing to do with job's counseling or whatever other counseling opportunities there were. This was a new idea or class to be offered to clients in the Housing Authority, or whoever, to assist in learning parenting skills?

A. Correct.

Q. Now, was this a separate federal grant?

A. No, no, this was under the grant that I was working on.

Q. Okay. Was the Dyersburg Housing Authority paid according to the number of people that were enrolled in the class?

A. No.

Q. It was a block grant of the nature where the number of people had nothing to do with it?

A. The nature of people on one hand doesn't have anything to do with how much money we get because the money is based on how many units the Dyersburg Housing Authority [840] had. But in order to get continued funding, you have to show that you are implementing those goals and objectives as set up in the grant. And of course, that is why you keep numbers as such.

Q. Let me see if I understand that, now. The money was there to do the parenting class, but to continue the parenting class, you have got to show that you used the money and that there was a need for it?

A. Exactly. You have got to show that you have people coming to any class or to any program that you have implemented.

Q. Now, in other words, the Housing Authority had a financial study in this parenting class being successful and being used?

A. No. See, the Housing Authority—this grant is really a different one. And as I had stated before, it is a coalition. There are ten housing authorities that is involved. We are a support program under resident initiatives for the housing authority. So, the only thing that the housing authority has to gain is that whenever they get their rating twice a year, or once a year, or whatever, that the programs that we have is going to make a difference on whether they get an a, b, c, whatever, under resident initiatives, which is a big part of their grading.

Q. But am I incorrect in my conclusion from what you [841] have said that the parenting classes were for the clients of the Dyersburg Housing Authority?

A. Yes, that's who I wanted, were the tenants.

Q. Tenants who lived in the Dyersburg Housing Authority?

A. The tenants that lived in housing that had children in juvenile court.

Q. So, it really didn't matter whether the judge went along with this program or not, you still had access to them through the Housing Authority, didn't you? You were just wanting him to order that they do that?

A. Correct.

Q. But it was still available to them regardless?

A. Correct.

Q. And he indicated no displeasure with the program, no obstacles in any way, did he?

A. No.

Q. And in response to Mr. Parker's question, you said that not much happened after that. Well, isn't it correct that shortly thereafter is when this investigation reached full bloom, and in May of last year, he was indicted? May of this year—pardon me—he was indicted?

A. Am I supposed to answer?

Q. Isn't that true?

A. As far as I know, I suppose that is true.

Q. So, didn't he have very little contact with anybody [842] as a juvenile judge during most of this period?

A. I don't know what kind of schedule he had or what he was entitled to do.

Q. The parenting class was an option for all members of the—all clients of the Dyersburg Housing Authority with or without the judge, is what I am saying, correct?

A. We went ahead, and in the Spring, yes, we offered the parenting classes across the board.

Q. All right. Without his assistance or without him even being there?

A. Correct. But see, whenever I first wanted the program to be implemented, I wanted to be able to help the parents of the juveniles, or the children that were in juvenile court, so that we could do something a little bit different in order to help the parent a little bit more. How much does it help a parent for them to pay a fine that they can't pay because they are on welfare, and then for the child to go out and to do the same thing again, or worse.

Q. Now, again, correct me if I'm wrong. If you were wanting to get Judge Lanier to expand this program, not to people that lived in the project, but to send you people that didn't live in the projects, didn't live in the housing authority homes?

A. No, I had never asked that. It was for the tenants because that is what our grant is for. It is for people who [843] live in housing.

Q. And that is all you enrolled in the program?

A. Basically, that is who we have enrolled.

Q. I'm not asking you basically, I asked you if that is all you enrolled in the program?

A. Are you saying programs or in the parenting programs?

Q. Parenting programs.

A. In the parenting programs, the two people that he sent me, the reason that I accepted it was because the child that was involved, the infant, the last address was Lipford Circle, which is in housing. So, even though the father didn't live in housing, he came to parenting, but that was the child's last address so that is kind of an iffy there, but we went ahead and let it go through.

Q. Now, when you say you didn't tell anybody about these things that you said that happened because somehow you didn't want him angry at you because of the funding, or because of the parenting program?

A. Could you restate that question, please.

Q. Did you say you didn't complain about these matters to anybody because you didn't want Judge Lanier angry at you because he might have some impact on your parenting program?

A. I don't think that it was the parenting program. Judge Lanier carries a lot of impact, period.

Q. I understand. We have heard that a lot. Tell me [844] how?

A. I think I already stated.

Q. Well, state it again?

A. That a judge—

Q. Not "a" judge, this judge.

A. In any county or community in any state, that is a position that deserves an amount of respect.

Q. I'm not talking about respect, I am talking about power. Where did he have any power over you or life, or your program?

A. Judge Lanier knows an awful lot of people.

Q. Well, he didn't try to harm your program in any way, did he? We're not talking about knowing people, we are talking about the charges you made that he has power and that he could have used it against you in your program. I am asking you how?

A. He told me if I would come back and see him, he would send me all the clients I needed.

Q. But did he tell you if he didn't, that he was going to scuttle your program?

A. He told me that if I came back to see him, he would send me all the clients that I needed.

Q. But your program was sitting on its own bottom with the Housing Authority, it had nothing to do with the extra clients that he might send you?

[845] A. I am just stating what was said.

Q. I know that you are just stating that, but how did he have power over you? We have heard that all week, now, explain it to me. How did he have power? He is a judge, he hears divorces. You had no divorce in his court?

A. No.

Q. He hears child custody and child support and you had none of that in his court?

A. No.

Q. He hears some law lawsuits, workmen's comp. You had none of that in his court? Yet, you are here saying that you did this and didn't report it because he had some power over you. What kind of power did he have over you?

A. I came in to ask him would be please help me with this federal program. And he said that if I came

back to see him, that he would see me all the clients that I needed. Now, what do you think that means?

Q. Let me repeat my question and let me restate my premise here. You told him this was a program that had to do with the Dyersburg Housing Authority clients, correct?

A. Correct.

Q. I'm afraid you're going to have to sit up to get to the microphone so we can all hear you. Now, you have also stated that the program continued to operate regardless of his input into it, correct?

[846] A. That is correct.

Q. So, the program didn't falter, fail, or stumble at all because you didn't go back to see Judge Lanier, did it?

A. I think that it could have probably been better.

Q. That wasn't my question. It is still there and it is still in place, isn't it?

A. Yes, it certainly is.

Q. You all are still getting funding because you are able to show the government that you have got people coming to your parenting classes?

A. To our various programs.

Q. Including parenting classes.

A. As outlined in the grant.

Q. And does that increase the salaries of the people at the Dyersburg Housing Authority?

A. No, this doesn't have anything to do with salaries of people at the Dyersburg Housing Authority.

Q. Does it have to do with employment, not salaries?

A. Not with the Dyersburg Housing Authority.

Q. With who?

A. I work for a federal program called Drug Free Public Housing.

Q. Does it have anything to do with the amount of money you are paid in the job you are in?

A. The amount of money that any position is paid is set [847] up at the time that the grant is written.

Q. Okay. And the continued funding is necessary for the continuance of the grant, correct?

A. Correct.

Q. So, again, I am back to my original question. How did he have power over you?

A. I think I have already answered that.

Q. Because he said if you will come back I will send you all the clients you need?

A. Correct.

Q. Were you afraid of him?

A. Yes, in the context that I don't feel like that whenever I go and talk to a professional person for a professional meeting, that I should be subjected to that.

Q. That wasn't my question. My question was were you afraid of his power over you? Maybe I can rephrase it. Assuming for the moment for arguments sake, that everything you say has happened, how did that relate to this man's position as the Chancellor of Dyer County?

A. The judge is a very political person in the context that he comes from a political family, has a notorious political background, he knows a lot of important people.

Q. Let's explore that a little bit. Comes from a very political family. Most of them are dead, correct?

A. I don't know that much about his family.

[848] Q. Well, you just expressed an—

A. Other than what I have read in the newspaper.

Q. His father has been dead for twenty some odd years, hasn't he? His brother James O. Lanier, who was a state representative and the District Attorney, has been dead for several years now, hasn't he?

A. I don't think several, maybe one or two.

Q. He is the only one left, isn't he?

A. As far as I know.

Q. And he hears divorce cases and worker's comp cases. How does that make you fearful of him because of all of this power? You didn't have any of those cases, did you?

A. (No response).

Q. I'll pass unless she wishes to answer.

A. I think I already have answered it.

Q. Did you go back and report this to Mr. Joe Boyd, the District Attorney?

A. No, I did not, not immediately, no.

Q. Not immediately. When did you?

A. The only time that I said anything to Joe Boyd about it was after the grand jury and a couple of telephone calls from the U.S. Attorney's office, I was under the assumption that the indictment would be coming down in January. And Joe—I like Joe Boyd a lot, he is a friend of mine. He is the Chairman of the Housing Authority. He has been very [849] supportive of our program and I told him at that time in January that I wanted him to know from me first before he read it in the paper or heard from anyone that chances are I would be named as a victim in this case.

Q. You were telling who that, now?

A. Joe Boyd.

Q. But that was long after this incident occurred?

A. That's correct.

Q. He sent you up there to Judge Lanier's office and said, you go make the presentation. Had no fear of doing that. Does he ever call you back and say well how did things go, or you not ever talk to him? You are very close to him, you say. Did you not ask or talk to him about how things went with the Chancellor, with the juvenile judge?

A. About maybe a month and a half or so later, I can't remember if it was before or after the grand jury for sure, you know, before the indictments came down, Joe and I were talking about this. And I said I'm a little bit disappointed with the number of people, as far as the parenting classes are concerned. And he told me that I probably did not need to see—and he said "David" right now.

Q. Well, did you tell him that the reason that you weren't getting anything from David was because he had told you to come back and see him and he would send you clients?

A. No, I did not elaborate that, no.

[850] Q. You didn't elaborate on that?

A. No, I did not.

Q. You didn't tell him about anything that happened to you on the day that you were there, did you?

A. No.

Q. And the reason that you didn't need to see David was because he was about to be indicted, and everybody in town knew that, and you told people that you might be one of the alleged victims?

A. I didn't tell people.

Q. Some people?

A. I went and told Joe.

Q. Who said, "Well, you don't need to go see David now if you are one of the victims"?

A. No, that isn't what I said. At one time, I had talked to Joe before the indictment. We were talking about the parenting class. And I said I was disappointed with the number of people in the parenting classes, I was disappointed with the situation.

Q. And the investigation was already going on and everybody knew about it?

A. Then in January I went and talked to Joe again and told him that I wanted him to know that more than likely I would be named. That I hoped that I wouldn't be, but more than likely I would be named.

* * * * *

[862] A. He is still the judge.

Q. That is why you didn't report it?

A. Exactly.

MR. EMMONS: Would the Court give me just one moment?

THE COURT: Yes, sir.

(Counsel conferring with defendant.)

MR. EMMONS: Just a couple of more questions, Your Honor.

THE COURT: All right. Go ahead.

BY MR. EMMONS:

Q. Just to be sure I understand, basically, I believe you testified that you made no complaint at all to anybody until the FBI came and talked to you?

A. That is correct.

Q. And were you surprised that the FBI came and talked to you?

A. When they called me, I think I was shocked because, you know, the FBI, if you are not used to being called on something like this, it is a little upsetting.

Q. And they get your attention, do they not? How, many came to see you, two?

A. One FBI agent, one TBI agent.

Q. Would it have been Mr. Castleberry and Mr. Champine?

A. Yes, that's correct.

* * * * *

[865] BY MR. PARKER:

Q. What was the reason that you went to the judge's chambers?

A. To talk to him about implementing parenting [866] instruction through order of his court of parents of juveniles.

Q. Mr. Emmons about beat the horse to death about why he [sic: you] didn't report this. I am going to ask you to look down deep inside. How did what the judge do to you make you feel?

A. (Crying) I went to the judge because I work in a program with a lot of underprivileged people who

need an awful lot of help, and I would like to think that there would be one person that would really help me and the program that I work for. I didn't go in for myself, my salary was going to be the same regardless of whether I got that program or not. I went in for six hundred people that I work for in housing, and I don't think I should have to be subjected to that from any person in any kind of position.

Q. And how did it make you feel?

A. I just felt really degraded and like he evidently didn't think that I was worth very much.

Q. Did that have any relation to why you didn't report this?

A. I don't think that this is something that you want to voice to too many people or that you want too many people to know about.

MR. PARKER: That's all I have, Your Honor. Thank you.

THE COURT: Thank you. You may step down.

* * * * *

TRIAL TRANSCRIPT

(December 9, 1992)

[960] THE COURT: All right, Mr. Emmons, do you have a motion?

MR. EMMONS: Yes, Your Honor.

THE COURT: Your Honor, I have a motion under Rule 29 for a judgment of acquittal on the proof at this point, and I would specifically request that the Court consider the motion as to right now since the government has closed its proof in chief. And I would rely primarily on much of what we have argued previously in pretrial motions. I think my motion is this; based upon the lateness of 18 242, I am very simply, which I am sure is not a surprise to anyone, arguing that under 18 241 and 242 that there simply has been no federal crime proved by the government in this matter. And I specifically rely upon the phraseology, "Whoever under color of law." For purposes of this motion, I am not alleging that there has been no deprivation of constitutional rights shown. I am satisfied that a deprivation of freedom on liberty from sexual assault is adequate. I am not as sure that that would include all of the complainants in this manner. I think there is one person, Ruby Sipes, where it is stretched to say that the exposing of the genitalia included—and I'm assuming her testimony to be true, and of course, that's all the Court has to go on at this time, that the [961] exposure of the genitalia, there is a question about whether or not that is a sexual assault, so I'll start with that one matter and comment very briefly.

* * * * *

[Testimony of Donna McDevitt]

[1014] BY MR. EMMONS:

Q. Would you state your name, please?

A. Donna Forsyth McDevitt.

Q. Donna Forsyth McDevitt, is that correct?

A. Yes, sir.

Q. Keep your voice up loud enough for me to hear you and I think probably everybody else can. And where do you live, Donna?

A. At 531 Poplar, Dyersburg, Tennessee.

Q. And you are married?

A. Yes, sir.

Q. To whom?

A. Mitch McDevitt.

Q. And how long have you been married to Mr. McDevitt?

A. Twelve years in August.

Q. Do you have children?

A. Two, eight and four.

Q. Do you know Vivian Forsyth?

A. Yes, sir, I do. She is my sister.

Q. How old is Vivian, do you know?

A. Twenty-six.

Q. So, you are how many years older than Vivian?

A. Six.

Q. Six years older?

A. Yes, sir. Right at six. Her birthday is May the 26th, [1015] mine is August 23rd.

Q. You do know that she has testified in this case against the defendant, Judge Lanier?

A. Yes, sir, I do.

Q. Ms. McDevitt, do you have an opinion as to the honesty or dishonesty of your sister, Vivian Forsyth?

A. Do I have an opinion?

Q. Yes, mam.

A. Yes.

Q. What is that opinion?

A. That she is not very honest. She tells you what she wants you to know for what she thinks is appropriate.

Q. Do you think or think you know—you have stated your opinion. Do you know, or think you know, the reputation of your sister, Vivian Forsyth, in the com-

munity of Dyersburg, do you know her reputation among her friends, neighbors, and acquaintances for truthfulness?

A. Most of what I know, what I can do is base my opinion on my personal experiences.

Q. And that is that she is not a very honest person?

A. That's right.

MR. EMMONS: I pass the witness.

THE COURT: Cross examination.

* * * * *

[Testimony of Leigh Ann Johnson]

[1030] [Ms. Johnson:] A. I didn't think she was qualified for the job. She hadn't had any experience with the word processor or with [1031] anything that she would have had to have been doing legally, you know, no legal background at all. And so I really didn't feel like she would be. But Daddy was out there the night that she called and when I hung the phone up I told him who it was and what she wanted, and I just told him that I thought she deserved a break, she had had a hard time and I wish that he would hire her because of that.

[Mr. Emmons:] Q. You sort of put in a good word for her?

A. Yeah, I did, I talked him into hiring her. He didn't want to hire her because she didn't have the experience and he told me that. He said, you know, she is not experienced, she is not what I really need. But I said everybody deserves a break and I think she is smart enough that she will catch on, if you will just give her a chance.

Q. Did you ever have any concerns about—or hear any concerns voiced about her daily appearance, for want of a better term?

A. When Sandy worked there—he did hire her as a secretary, and when she worked at the courthouse I was working upstairs in the courthouse. And she worn some clothes that were way too casual for the office. She needed to dress more specially and Daddy said something

to her right off the bat, and it hurt her feelings. So, then he came up and he said, okay, she is your baby, I hired her because of you, I want you to tell her that she is going to have to [1032] dress better, or dress more appropriately. She wore these pink—the day he came up there she had on pink knit pants with panties, no panty hose, and they were very thin. And she had on a half shirt, sleeveless and her bra was showing, and he was very upset about that. He said If I tell her again, I'll hurt her feelings and I don't want to hurt her feelings, so I want you to talk to her.

Q. And did you undertake to try to talk to her about that?

A. Yes, I did. She said—as soon as I have been working a while, I am going to get me some money and buy me some better clothes, but right now this is all I've got.

Q. Did you do anything specifically to help her get any kind of clothes as her friend?

A. Well, she bought some clothes from me. She paid, you know, for them, but she was—I felt like I did her a service or whatever.

Q. Did you sell them cheap to her?

A. Yeah, they were my samples from where my—I sold Faith Walker clothes and they were my samples, about four hundred dollars worth of clothes and I let her have them for a hundred and eighty dollars, and I let her finance them with me. And I was working part-time, had just had a baby, and really needed the money, but I let her have two or three months to pay for them. It was a hundred and eighty dollars and she was going to pay me like fifty dollars a month, but [1033] she never did pay me all of the money. She still owes me fifty dollars, and my husband can vouch for that.

* * * * *

[1034] Q. Do you know Vivian Forsyth?

A. Uh, huh. I have known her all of my life.

Q. Do you have an opinion that you can state about whether or not she is an honest or dishonest person?

A. An opinion?

Q. Yes.

A. She is a pathological liar, she has lied all of her life about everything.

Q. How long have you known her?

A. We were in playschool together. We started out in playschool and had gone from there. When she was in high school, we went our separate ways. We were in a sorority together my Ninth Grade in high school, but then we went our separate ways. She was too wild for me.

Q. Do you know what, or think you know what her reputation—you have stated your opinion, I'm asking not for your opinion, but what her reputation is in Dyersburg among her friends, neighbors, and acquaintances, as to honesty or dishonesty?

A. She is dishonest.

Q. Did you ever talk to her at the courthouse while you were working out there?

A. Uh, huh. She came in and out, she was working for Charles Kelly, and she came in and out filing cases and stuff for him.

* * * * *

[1037] Q. Why did you do that?

A. Well, because, I think that day he had had to answer his own phone, she wasn't getting the phone. And it was just something all of the time. She just had problems catching on and it was just something all of the time. And I think that day he had gotten onto her because he was having to answer his phone. And I just told him not to be so gruff with her. And after that he got onto me for getting onto him in front of her, because, you know.

Q. Did you ever hear him say to her in your presence that everybody is supposed to be afraid of the judge?

A. Huh, uh.

Q. Do you know Fonda Bandy?

A. Uh, huh.

Q. How long have you known Fonda Bandy?

A. Since August of '91.

Q. Do you know where she works?

A. She worked for Drug Free Public Housing in Dyersburg. It is through the Dyersburg Housing Authority, their office is outside the Housing Authority office. I worked at the Housing Authority, that is where I met her.

Q. Did you ever work with Fonda Bandy?

A. We worked on special functions together, like for the tenants.

* * * * *

[1066] LARRY JOHNSON,

The said witness, after having been first duly sworn, was examined and testified, as follows:

DIRECT EXAMINATION

BY MR. EMMONS:

Q. Would you state your name, please?

A. Larry Johnson.

Q. All right, and Mr. Johnson, where do you live, sir?

A. I live at 1359 Don Hurley Road in Dyersburg, Tennessee.

[1067] Q. Now, are you related by blood or marriage to the defendant, Judge David Lanier?

A. Yes, sir, I am, by marriage.

Q. Who are you married to?

A. I'm married to Leigh Ann Lanier.

Q. How long have you and Leigh Ann been married?

A. We've been married for five years.

Q. Do you have any children?

A. Yes, sir, we have one son, two years old.

Q. Did you grow up in Dyersburg, Tennessee?

A. Yes, sir, I did.

Q. Do you know a lady named Vivian Forsyth?
Vivian Archie Forsyth?

A. Very well.

Q. How long have you known her?

A. I've known her for at least ten years.

Q. Were you in school with her or did you know her folks or how did you know her?

A. Right after she was in school, I dated a real good friend of hers.

Q. How long did you date this good friend?

A. For about three years.

Q. Were you around Vivian during—considerably, during the time during that?

A. Yes, sir.

[1068] Q. I'll ask you if during that time and now, do you have an opinion as to whether or not she is a truthful or untruthful person?

A. No, sir, she is not a truthful person.

Q. And is that based upon your experiences with her and with her friends—

A. Yes, sir, it is.

Q. I'll ask you if you also, during that period of time, the time that you knew her, I'll ask you your opinion. I'm going to ask you now if you know or think you know her reputation in the community of Dyersburg for truthfulness or untruthfulness?

A. Yes, sir, I do.

Q. And what is that reputation?

A. Untruthful.

MR. EMMONS: I pass the witness.

THE COURT: Cross examination.

* * * * *

[1075] KEITH UNDERWOOD,

The said witness, after having been first duly sworn, was examined and testified, as follows:

DIRECT EXAMINATION

BY MR. EMMONS:

* * * * *

[1076] Q. And did you know a lady working at Checkers or before or after, a lady named Vivian Archie Forsyth?

A. Yes, sir, I did. She was—

Q. How did you know her?

A. She was the waitress.

Q. At Checkers?

A. Yes, sir.

Q. How long a period of time did you work with her there?

A. Probably six months.

Q. During that period of six months associating with her, did you form an opinion as to her truthfulness or untruthfulness?

A. Yes, sir. In my opinion, it was formed for me, really, because my boss told me not to let her come behind the counter.

Q. I'm asking your opinion.

A. And my opinion was the same as his because she never told me the truth about anything.

Q. Now, as you say, your opinion. Let me ask you if you know or think you know what her reputation for truthfulness or untruthfulness was in the community in which she lived?

[1077] A. Okay, I know most everybody in Dyersburg and most everybody in Dyersburg will tell you that Vivian will lie, would rather lie than tell the truth and she'd lie for any reason to benefit her or to get her in a certain position or place.

MR. EMMONS: I pass the witness.

THE COURT: Cross examination.

CROSS EXAMINATION

BY MR. PARKER:

Q. How long have you know Vivian?

A. Approximately twelve years.

Q. Twelve years? The fact that she would lie to you, would that give the judge the right to grab her by the hair and throw her in a chair and stick his penis in her mouth?

MR. EMMONS: Object to the question. What we're talking about is her credibility, Your Honor.

THE COURT: Do you want to be heard on that objection?

[1078] MR. PARKER: I withdraw the question.

THE COURT: Thank you.

BY MR. PARKER:

Q. Let me ask you this. While you may not think she's a truthful person, have you been in the courtroom during this case?

A. No, sir, I have not.

Q. Have you heard all the evidence of what happened in this case?

A. No, sir, I have not.

Q. Have you ever heard the fact that there are eight other women that very similar things happened to?

A. I don't know how many women at all and don't know all the women.

THE COURT: Ladies and gentlemen, without objection, I'm going to strike the last question and answer from the record and order you to disregard it. I have indicated to you earlier that each of these cases, each count is to be decided separately on its own and not with reference to each of the other counts. Go ahead.

MR. PARKER: That's all I have. Thank you, Your Honor.

THE COURT: Anything further, Mr. Emmons?

MR. EMMONS: No.

THE COURT: Thank you, you may step down.

* * * * *

[1114] KATHY WALKER,

The said witness, after having been first duly sworn, was examined and testified, as follows:

DIRECT EXAMINATION

BY MR. EMMONS:

* * * * *

Q. And how long have you worked for Dr. Reid?

[1115] A. Well, I have been with him four weeks.

Q. Previously, what other jobs have you had just as a general rule?

A. We own six dry cleaners and Brassier's Bra and Tuxedo in Jackson.

Q. When you say we, who are you talking about?

A. Our family, the family. Walker's Cleaners.

Q. Are they located in Jackson, Tennessee?

A. Four locations in Jackson and one in Humboldt, and one in Milan.

Q. Okay. Do you know a lady named Vivian Forsyth?

A. Yes, I do.

Q. And can you tell me how long you have know Vivian Forsyth?

A. Since she was seven.

Q. Say it one more time?

A. Since she was seven.

Q. Since she was seven years of age?

A. Yes, sir.

Q. And in what capacity have you known Vivian?

A. I kept her on a daily basis when I worked for her mother.

Q. Who is her mother?

A. Judy Forsyth.

Q. And where did you work for her mother?

[1116] A. I worked at Forsyth's dress shop in Dyersburg.

Q. I'm sorry, I'm have trouble hearing you.

A. Forsyth's Dress Shop in Dyersburg.

Q. Okay. Forsyth's Dress Shop?

A. Yes, sir.

Q. Which is where?

A. It was at 427 Troy.

Q. Okay. And that is a business owned by Vivian's mother?

A. Right, that's correct.

Q. General ladies' apparel shop?

A. Yes, sir.

Q. How long did you work there?

A. Almost four years.

Q. And how old was Vivian at the time?

A. She was seven.

Q. And have you known her continuously since then?

A. Yes, sir. I mean—yes, sir. I know her. I have not kept in close contact with her, but I do know her.

Q. During the several years there that you worked for the shop, how close were you to Vivian?

A. Very close, I kept those children on a daily basis.

Q. Ms. Walker, do you have an opinion as to the truthfulness and untruthfulness of Vivian Forsyth?

A. She is an habitual liar.

Q. I'm not asking for a specific instance, but do you—

[1117] A. Well, she enjoys—anybody that would repeatedly tell lies about their own sister for their benefit and enjoy doing it, would lie about anybody, and she did that constantly.

Q. Now, in addition to stating that opinion to this jury, do you think—do you know, or do you think you

know, her reputation for truthfulness or untruthfulness in the community where she lives?

A. Oh, yes, sir.

Q. And what is that reputation?

A. An habitual liar, she does not know how to tell the truth. She tells lie after lie to get out of lies, just for—to benefit for herself.

MR. EMMONS: I pass the witness.

THE COURT: Cross examination.

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TRIAL TRANSCRIPT

(December 10, 1992)

[Testimony of Lyman Ingram]

[1163] CROSS EXAMINATION

* * * * *

BY MR. MOSKOWITZ:

Q. Mr. Ingram, I think you testified that the public assumes a great deal of power in the Lanier family. Is that right?

A. Yes, it is.

Q. What do you mean by that? Would you explain what you [1164] mean by that?

A. Well, there are—over the years, Judge Lanier's father procured many jobs for people and if they wanted to get a job, many, many people went to Judge Lanier, Judge Lanier's father, about a job. If it was for the state or if it was for one of the local industries or what not, he accommodated and helped a lot of people that way. And he was the Ed Crump of Dyer County, if you know what I mean.

Q. I'm sorry, I didn't hear you. The Ed what?

A. The Ed Crump of Dyer County. Ed Crump controlled Memphis.

Q. I see.

A. And he was the Ed Crump of Dyer County and that general area, even to outside of Dyer County, and people perceive and get the idea, sometimes even falsely, of some people having powers they don't have that are from that immediate family. And I'm not saying that to say that Judge Lanier had all of that power but a lot of the public perceived that he did and that James O. did, that he was judge and James O. was District Attorney for a year before he died, and it's not what you actually have. I'm talking about what the public perceives.

Q. I understand. And Judge Lanier held other public offices besides judge, do you recall?

A. He had been mayor prior to being judge. He was mayor [1165] for several years, I don't know how many, probably fourteen—twelve to fourteen years.

Q. And I guess you would agree with me that in addition to this aura of power that you're talking about that Judge Lanier had with his family and his finances, that as a judge, he also was in a position to make important decisions on people's lives. Is that the assumption?

A. Well, every judge is, even down to a General Sessions judge because he has the power to put people in jail as General Sessions judge. All judges have decisions that they have to make, always affect people.

Q. I suppose he had, he would have the power to decide, for example, in a divorce proceeding, correct me if I'm wrong, which parent would take custody of the child if there were a child in the divorce proceedings. Is that correct?

A. Yes, he would have that power.

Q. And he would have the power to either grant or not grant a divorce in certain contested cases?

A. Right.

Q. Some of these cases are very emotional, very involved in the complications involving families and money all sorts of very highly charged issues. Is that correct?

A. That's true.

Q. And also, I suppose, that as Chancery Court judge, Judge Lanier also controlled certain jobs in the courthouse, like [1166] secretarial positions and chancery court positions.

A. He appoints the clerk and master and what other jobs he has control of, I don't know. I'm sure the secretary, yes. But as far as the juvenile officers and so forth, I'm not familiar with how those are employed.

Q. And I think you testified, and correct me if I'm wrong on this, Mr. Ingram, that James O.'s son was a District Attorney for a period of time?

A. Assistant, yes.

Q. Assistant District Attorney.

A. Right.

Q. That would be Judge Lanier's brother's son?

A. That's correct. A fine young man.

* * * * *

[1215] THE COURT: Would you stand and raise your right hand and be sworn by the clerk, please.

COLLEEN FLEMING,

The said witness, after having been first duly sworn, was examined and testified, as follows:

DIRECT EXAMINATION

BY MR. EMMONS:

Q. Would you state your name, please?

A. Colleen Fleming.

Q. And would you spell your name, both names, for the court reporter?

A. C-O-L-L-E-E-N F-L-E-M-I-N-G.

Q. And where do you presently reside?

A. 125 Lake Royal, Lewisburg, North Carolina.

Q. And you live there with your husband?

A. Yes, sir.

Q. What is his name?

A. Lyon, L-Y-O-N.

Q. And how long have you been married to Lyon?

A. About six and a half years.

Q. Do you know a lady named Vivian Archie?

A. Yes, sir.

Q. Forsythe Archie?

A. Yes, sir.

[1216] Q. How long have you known Vivian?

A. Ever since pre school.

Q. You have known her your entire—

A. (Interjecting) So, about twenty-three years.

Q. Twenty-three years?

A. Twenty-three approximately.

Q. Have you lived in Dyersburg for a long time?

A. Yes, sir.

Q. When did you move to Dyersburg?

A. About six years ago.

Q. How close were you to Vivian?

A. Well, we were best friends all of our life.

Q. Pre school, grade school and high school?

A. High school.

Q. Have you ever had a conversation with her regarding any things that she stated that—any matters regarding the accused, Judge David Lanier?

A. Yes, sir.

Q. Did she tell you whether or not she had had sexual intercourse with him, forced or not forced?

A. Well, she had—well, she told me that she hadn't ever had sex with the judge.

Q. Ever?

A. Ever.

Q. How long ago was this?

[1217] A. I'm really not sure of the time, I would say maybe two years ago, a year and a half. That is just a guess.

MR. EMMONS: I pass the witness.

CROSS EXAMINATION

BY MR. PARKER:

Q. You did say Vivian was a liar and you couldn't believe anything she said?

A. I never said that. I just—you know, I—

Q. Well, you said she has got a bad reputation for truthfulness, is that right?

THE COURT: I don't believe she did.

THE WITNESS: I haven't said that.

MR. PARKER: That's all I've got. Thank you.

MR. EMMONS: Thank you.

THE COURT: You may step down.

(Witness excused)

* * * * *

[1252] STEVE GREEN,

The said witness, after having been first duly sworn, was examined and testified, as follows:

DIRECT EXAMINATION

BY MR. EMMONS:

Q. Would you state your name, please, sir?

A. Steve Green.

Q. How old are you?

A. Thirty-six.

Q. Where are you presently employed?

A. In the City of Dyersburg Public Works Department.

Q. Have you lived in Dyersburg since then?

A. Yes, sir.

Q. How long have you lived there?

A. All my life.

Q. Do you know Vivian Forsyth Archie?

A. Yes, sir, I do.

Q. How long have you known her?

A. Probaly ten, fifteen years.

Q. In what capacity, Mr. Green, have you known Vivian?

A. I used to go with her some.

Q. For how long a period of time did you date her?

A. Two or three years.

Q. How long ago was that?

A. It's been about six years ago.

[1253] Q. Have you known her socially before that and since that?

A. Yes, sir. I've been around her different places and stuff, yes, but not nothing close since we quit going together.

Q. Mr. Green, based upon your association with her over this seven year period, do you have an opinion about whether or not she is a truthful or untruthful person?

A. I wouldn't trust her as far as I could throw her. She's a compulsive liar and got a split personality. I wouldn't believe—

THE COURT: Sir, I think you've answered the question. Go on to your next, please, sir.

BY MR. EMMONS:

Q. Mr. Green, in addition to your opinion that you just stated, do you know what her reputation is among her other friends, neighbors and acquaintances for whether or not she's truthful or untruthful?

A. I ain't ever heard anything very good about her lately.

Q. As to truthfulness?

A. Yes, sir.

MR. EMMONS: Thanks, sir. Pass the witness.

THE COURT: Cross examination.

MS. SPAIN: Yes, sir.

* * * * *

[Testimony of Ralph Lawson]

[1264] [Mr. Emmons:] Q. How long have you known Judge Lanier?

[Mr. Lawson:] A. Ever since I've been in Dyersburg, 1960. I went up there Halloween night, October 31, 1961. I've known him since then.

Q. Would it be fair to say that ya'll have been on both sides of some political controversies?

A. That's right.

Q. A political ally in the sense that you're always on the same side of that issue?

A. When I first went to Dyersburg, I went in with a firm. I didn't know anything about politics at the time, still don't know much, but I went with a firm that was not aligned with Judge Lanier's father. And so I was identified as "anti-Lanier" for a period of time, a number of years.

Q. Now, in subsequent time in recent years, have you worked on special assignments as a referee in Juvenile Court?

A. Yes, I have.

Q. What would prompt that kind of assignment?

A. Since Judge Lanier gained the bench, there were occasions when he would be out of town or what have you and he had asked me if I would fill in for him as Juvenile Referee and I was always glad to accommodate the Court.

Q. Did that occasion—was that sometimes occasioned by [1265] any possibility of conflict of interest or some appearance of impropriety?

A. Yes.

Q. Particularly, did you appear as referee in a case involving Vivian Archie Forsyth in a child custody matter?

A. I was appointed to take that case over. I was not advised why, I didn't ask. I was just asked, I believe, by the Clerk, advised me that the Chancellor wanted to know if I would hear that case, that he had some kind of conflict and I agreed to do it.

Q. And did you do that, hear that case?

A. Well, just a little bit of it. There never was a hearing, per se, with litigants in court, but I did take over the responsibility of handling that case, yes.

Q. Did you ever represent either a lady named Ruby Sipes or her husband or both of them?

A. Yes, I represented Terry Sipes, her husband, in an estate matter and Ruby was always there when we conferred and when we gained a settlement in Circuit Court. And later, I represented Mr. Sipes in a divorce action against Ruby Sipes.

Q. Did you have the matter before Judge Lanier that involved that estate matter or property matter that he ruled against you on and that you appealed it, or, am I correct in that?

A. Yes, you are.

[1266] Q. What was that about?

A. We run successful in trying to stop a foreclosure, SBA foreclosure, and they had their own attorney in from Nashville, and the Judge ruled against my client, Mr. Sipes. And so we elected to appeal it and took it through the appellate process.

Q. What was the result of that?

A. We were not successful on the appeal, my client lost his case.

Q. Was the Judge's ruling affirmed?

A. The Judge's opinion was affirmed, yes.

Q. Now, I believe you said that you represented Ruby Sipes' husband in a divorce action?

A. That's right.

Q. Was this a contested divorce, a hearing, or was it settled and disposed of on an agreed property settlement?

A. I recall that the defendant, Ms. Sipes, did not appear within the time limit to file an answer. We set the matter down on default. Mr. Sipes and I appeared in court before the Chancellor, gained the default and shortly after that, Mr. Lyman Ingram called me, if you want me to go on?

Q. Yes, sir.

A. Mr. Lyman Ingram, a local attorney, called me and said he'd just been retained by Ms. Sipes and they

wanted to petition to reopen the case. We opposed it but Chancellor [1267] Lanier allowed it to be reopened and, at that time, after further hearing, he confirmed our default in so far as the divorce being granted to my client. But he awarded what she had, Ms. Ruby Sipes, had asked for through Mr. Ingram, child support for the seventeen year old daughter. So we sort of won it and lost it.

Q. Okay. And Ruby sort of won it and lost it, is that what you're saying?

A. Yes.

Q. Do you handle a number of divorces, Mr. Lawson?

A. Quite a few, about twenty—

Q. Twenty, I'm sorry—

A. Excuse me.

Q. I'm sorry.

A. Probably about twenty percent of my practice is domestic relations.

Q. Where do you file for divorces in Dyer County, which court?

A. Well, you have a choice. When Judge Joe Riley came on the bench, our Circuit Judge, he made it very clear to the Dyer County Bar that he did not favor, did not want to hear divorce cases, being heavily involved in criminal practices. So, we tried, I tried, most of my domestic relation cases in Chancery Court, but the trend the last two or three years goes both ways. I file them in Circuit Court and I file them [1268] in Chancery Court.

Q. And who makes that decision where they are to be filed?

A. Usually it's up to the lawyer.

Q. Sometimes, does the client have a preference?

A. Yes, sometimes a client thinks that they have heard about a particular judge and they want to be in that court and, you know, usually it's for no other reason than just to accommodate the client. It usually doesn't make any difference which court you go into in a domestic relations case.

Q. If you get involved in a case where you file in a certain court and something arises that makes the client feel uncomfortable with the judge, is there a procedure for recusal of that judge and transfer to another court?

A. Yes, it is. It happens all the time. You file a motion and you present the issue to the court and I can't remember a case, I'm sure it's happened but it hasn't to me, where you ask the judge to recuse himself and they normally do.

Q. Normally they do?

A. Yes.

Q. Did you ever tell Ruby Sipes or her husband to go see Judge Lanier directly in chambers in regard to these matters that were before him?

A. No, sir, I wouldn't. If I had done that, then I shouldn't have a license to practice law. I would have never [1269] done that with any client.

Q. All right. That's something that should not have been done?

A. You don't do it.

Q. Do you have a recollection—you handle some criminal cases, too, a few, don't you?

A. Probably about ten percent of my practice is criminal.

Q. Do you have any recollection of being in the criminal courtroom on occasion when Judge Lanier was sitting in the courtroom that day, or do you remember anything about that or not?

A. I don't remember ever—I'm sure it's happened, but I know Judge Lanier didn't like to be involved in the criminal practice cases. He told me that and I don't remember that.

Q. Okay.

A. I may have been.

Q. Do you have any recollection, Mr. Lawson, of you and Lyman Ingram and Terry Sipes, your client, and Ruby Sipes, his client, meeting together, the four of you to try to work out that property matter?

A. I'm sure we had, yes. We always try to work it out, if we can, through counselling with agreement with clients. We talked about it. In fact, I'm the one, I think, that drew up the swapping of deeds between Terry Sipes and Ruby Sipes. And, if I'm not mistaken, she executed the deeds of transfer [1270] and then after all that was over, she changed her mind and she wanted more of the property, or something. I don't remember. It was something like, yes, we met at length and agreed on everything.

Q. And from any of those meetings, would you have ever had occasion to tell her, go over and talk to the Judge by yourself?

A. Mr. Emmons, I'm telling you now. In thirty years of practice, I have had clients that wanted to do that and I've told them they can't do it. You just don't do it.

MR. EMMONS: I pass the witness.

THE COURT: Cross examination, please.

MS. SPAIN: Yes, Your Honor.

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TRIAL TRANSCRIPT

(December 11, 1992)

[1422] **DAVID W. LANIER,**

having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. EMMONS:

Q. Would you state your name, please, sir.

A. David W. Lanier.

Q. And where do you live, sir?

A. 219 South Main Street, Dyersburg, Tennessee.

Q. You a long time resident of Dyersburg, Tennessee?

A. Yes, sir, I was born in Dyer County and I've lived there except when I was off in college.

Q. And your present job or occupation, sir, is what?

A. I'm the Chancellor of the Twenty-ninth Judicial District.

Q. You are temporarily not setting until the resolution of this matter, is that correct?

A. That's correct.

Q. Judge Lanier, you mentioned that you were born in Dyer County. Did you live there most of your life or all of your life?

A. I've lived there all of my life except when I was in college.

Q. Where did you go to college?

A. When to Memphis State University for three years [1423] and then the University of Tennessee law school for three years.

Q. Receive a law degree?

A. Yes sir, received an LL.B. Degree in 1958.

Q. And are you licensed to practice law in the State of Tennessee?

A. Have been licensed since that time.

Q. When you got out of law school, where did you go?

A. Went back to Dyersburg and started private law practice.

Q. What was your first encounter in the political arena?

A. In 1959—well, I was—I went to Lackland Air Force base for about three months in 1959, too, in the Air National Guard, but in the 1959 when I came back and started by law practice, I ran for the position of delegate to the constitutional convention of 1959.

Q. Has it been your intention originally to get into politics when you went back to Dyersburg?

A. No, sir, I came back to practice law and felt that it was my purpose to do just that and not be involved in politics.

Q. You are from a very political family, is that correct?

A. That's correct. My grandfather was a political [1424] office holder. And my father was a political office holder. And my brother was a political office holder.

Q. Your father was clerk of the county for how many years?

A. He was the county clerk court clerk for 24 years and general session judge for eight years.

Q. Did he hold any other political positions?

A. No, sir.

Q. You've heard him described in this courtroom as the Ed Crump of Dyer County, do you have any comment on that, sir?

A. Well, not being from Shelby County, I don't understand actually what that means. But my father was a political leader, if that is what that means, and he was involved in politics for some 32 years.

There is a plaque in the Dyer County Courthouse with his picture on it stating that he was involved in politics for 32 years. And he dedicated his life to helping other people.

Q. Your brother James O. Lanier, died about how long ago?

A. He died in 1991, September 1st.

Q. And he, at the time of his death was holding what position, sir?

A. District attorney.

[1425] Q. How long had he been the district attorney?

A. One year.

Q. What was—what was the cause of his death?

A. Cancer.

Q. Did he actually have cancer when he was elected district attorney?

A. He had had several operations. He had a kidney removed that was cancerous. He had a lung removed that was cancerous.

After he became district attorney he had a brain tumor which ultimately caused his death.

Q. During the time that he was district attorney, was he in the office regularly or—

A. Yes, sir.

Q. —or not?

A. He was there everyday.

Q. Okay, sir, let's talk about your political history.

What was the first office that you hold after being a delegate to the constitutional conviction?

A. I was elected alderman for the City of Dyersburg in 1964.

Q. When was that?

A. 1964.

Q. Oh, 1964. And how long was that term?

[1426] A. That was a two year term.

Q. And your next office?

A. I served as alderman from '64 to '65 and was elected mayor of Dyersburg for 1966—took office in 1966.

Q. How many terms did you serve as mayor?

A. Served seven terms, 14 years.

Q. You were defeated finally, I believe, for mayor, correct?

A. In 1980, yes, sir.

Q. When did you become chancery court judge, and how did that come about?

A. In 1982 I ran for position of law and equity judge at the time. It was a special judgeship that was created for Dyer County. And Judge Jones, who had been there for 48 years, retired. And five attorneys ran for that job and I got elected.

Q. And have you been in that position continuously since then?

A. Yes, sir, I've been re-elected in 1990 without opposition.

Q. Those are how many year terms?

A. Eight year terms.

Q. Judge, are you married?

A. I'm divorced at this point.

[1427] Q. And how long were you married to Joan?

A. I was married 29 years.

Q. And how many children from that marriage?

A. Two.

Q. Their names? Their names?

A. Leigh Ann—

Q. Take your time.

A. She is Leigh Ann Johnson—I'm sorry. And my younger is Robbye Lanier.

Q. Grandchildren?

A. Yes.

Q. One grandson, is that correct?

THE WITNESS: Could we take a break?

THE COURT: Let see you and the lawyers over here for a minute.

(The following proceedings had at side-bar bench.)

THE COURT: Judge, I don't mind taking a break. I don't think this is going to get any easier.

THE WITNESS: I can't talk when I'm emotional. I will have to sit there if that is all right.

THE COURT: I'm not going to pressure you and I don't want—

* * * * *

[1429] THE COURT: Could we have the jury out, Marshal.

THE MARSHAL: Yes, sir.

(Jury present at 11:55 a.m.)

THE COURT: Are you ready to proceed?

THE WITNESS: I hope so.

MR. EMMONS: Yes, I'm sorry.

THE COURT: All right. Mr. Emmons.

MR. EMMONS: Thank you, Your Honor.

BY MR. EMMONS:

Q. Judge Lanier, what type of judge is a chancery judge?

What are your duties and responsibilities, at least in the Dyer County circuit?

A. My duties since I've been the law and equity court judge until now has been concurrent jurisdiction with the Circuit Court.

We—the court was changed from law and equity to Circuit Court in 1984 I believe it was.

Q. Change of law and equity to Circuit Court?

A. To Circuit Court.

Q. All right.

A. For a short period of time I was the Circuit Court Judge Part II in Dyer County and Lake County. And there was no chancellor in the district.

[1430] So, after that it was changed to Chancery Court and we have all chancery jurisdiction plus most Circuit Court jurisdiction except criminal cases.

And up until the Supreme Court ruled, I forget now, maybe a year or so ago, we tried all accident cases, tort cases, all kind of cases that Circuit Court tried.

Chancery Court ordinarily does not try that type of case. We try boundary disputes, probate matters, divorces, equitable type things where there's not a real legal issue. It's what's fair for the people, it is more than equity court was called.

Q. Can you hear worker's comp. settlements in your court?

A. Hear worker's comp. settlement, yes.

Q. Do you hear any type accident, automobile accidents, wreck injuries at all?

A. Yes, I heard many, many of those jury trials, things like this. With this recent ruling I'm back to hearing regular Chancery Court cases and no more of those jury trial automobile accident, tort cases.

Q. Would it be fair to say, Judge, that you handle most of the divorces in Dyer and Lake County?

A. Probably 80 to 90 percent of them, yes, sir.

Q. Would it be just as fair to say that you do not [1431] have all of them and, if not, what other courts have jurisdiction?

A. The Circuit Court has concurrent jurisdiction. That means that they can hear divorce cases just like Chancery Court can. And it's up to the lawyers and their clients to decide which court they file their divorce case in.

Q. If a divorce case is filed in your court, do you hear the child custody and support matters?

A. Ordinarily when a case is filed in my court I hear it to its end. Sometimes something comes up in between there at the beginning or the end of that I will interchange with Judge Riley, the Circuit Court judge.

Q. Is there a procedure for recusal of a judge and is that done?

A. Yes, sir. If—pardon me, if a client [or] a lawyer feels that they cannot get a fair trial in my court or Judge Riley's court, they can ask us and we will normally step down or they can file a motion for recusal asking us to

recuse ourselves and we will have a hearing on it and see what the reason is. And if we feel that it is a legitimate reason, we will step down.

Q. How long have you had Juvenile Court jurisdiction?

A. Since I was elected, 1982 in Dyer County. I have [1432] no juvenile jurisdiction in Lake County.

Q. And how much of your time is spent in juvenile matters roughly?

A. I usually spend about two court days a month and possible another day or two on other matters.

Q. As a part of that juvenile jurisdiction, do you have juvenile officers and employees, I mean, adult people but who are working in the adult section?

A. Yes, sir. We have a probation Juvenile Court officer, and a youth services Juvenile Court officer and a secretary in that office.

Q. Some of these people work in Juvenile Court were Juvenile Court officers or have they been in the passed?

A. When I first got elected judge, the two juvenile officers, Joey McDowell and Stan Caviness, were also deputy sheriffs or police investigators in addition to working for the Juvenile Court.

Since that time, in reading the law, Juvenile Court officers are not authorized to be law enforcement officers. They are two separate functions. And we have changed that procedure so that the Juvenile Court officers now are officers of the court that work with the juveniles to try to help rehabilitate them or get them to treatment if they [1433] need it and work with the Judge.

* * * * *

[1442] [Q.] How many employees do you hire and/or fire?

A. Four.

Q. Four people?

A. Yes.

Q. And what positions do they hold?

A. My secretary in the courthouse and two juvenile officers and one secretary in the juvenile office.

Q. Did you ever fire any of these people that have testified against you here this week and last week?

A. No, sir, never fired any of those people.

Q. Sandy Sanders, where is she currently working to your knowledge?

A. She is still working right where she has been working ever since I hired her. Sandy, I think, made the statement that I fired her but I did not fire her.

Q. As far as your judgeship is concerned, what specific power do you have there that people seem to be afraid of?

A. My power is, as a judge, is to make decisions in case based on the law and the evidence as presented in court to me. That's the extent of my power.

Q. Do you talk to people in chambers?

A. In Dyer County I've been in politics a long time as you can tell from the offices that I've been elected to. Everybody knows me, they say I voted for [1443] you, I feel like I ought to be able to talk to you. I will talk to anybody that comes through the door. I will not discuss their case or the way that I'm thinking about their decision in their case. If they have got a case, I say, now, look, if you want me to hear your case, you can't talk to me about it. If you don't want me to hear your case, talk to me and I will recuse myself. So I talk to people everyday, lawyers and regular citizens, anybody that wants to talk.

Q. Did you have an open door policy in your office?

A. I have an open door policy.

Q. A lot of time answer your own phone?

A. A lot of time answer my own phone.

Q. Generally make yourself accessible to the public?

A. Up until this started I was in the office everyday from about eight o'clock to five o'clock. Since this has

started, I started holding court and leaving the court after I got through with court.

* * * * *

[1447] Q. Do you recall when that was approximately?

A. About a year before I hired her, but I don't remember even when I hired her now.

Q. You have heard the allegation that she has made regarding events of misconduct on your part that took place May through August of 1989, have you not?

A. Yes, sir, I've heard about that.

Q. Are those claims true or false?

A. They are false.

Q. Let me go back to why you hired her.

What was there about her that made you hire her?

A. She came in and, of course, she really wanted a job. She said I've been to college, got 90 something hours in criminal justice, it's what I went to college for to get in the legal field.

Q. Is that an important criteria in hiring a juvenile officer?

A. It's not a determining criteria but it does mean whether or not we get a federal grant. If one of the officers does not have 96 hours in criminal justice, then we cannot get a federal grant. We have two officers, one of them can have it, one of them cannot have it, or they can both have it or can have a college degree in criminal justice and satisfy the requirement, but if none of them have it, that just [1448] means that we can't get that federal grant.

* * * * *

Q. Did you hire Ms. Sanders?

A. I finally hired Ms. Sanders about a year later or several months later.

Q. She has testified that you required her to make weekly visits to your chambers, is that correct?

A. I have standard operating procedures for the juvenile officers. And there's a whole two pages of them.

One of the requirements in those two pages is that they have to fill out a weekly activity report and bring it to my office and discuss it with me, what's been going on for the past week over in the juvenile office, like I say, a couple of blocks away from where [1449] I am.

Q. And the reason that they have to come over is because one reason is that their office is separate from yours?

A. Right, it is not in the courthouse. I don't ever see them during the week. And I asked them to come over, I am the juvenile judge, I need to know what is going on in the juvenile office. And the only firsthand way I can know is for them to come over and go over each day's activities and talk to me about what is going on in the juvenile office. And I do ask all of them to do that. They don't do it though.

Q. She has also charged, Judge, that sometime during that time that you pinned her into that chair and kissed her right on the lips, you heard her make that charge, did you not?

A. I heard her say something like that, and that is absolutely false.

Q. Have you ever to your recollection kissed her at all?

A. Yes, sir, I have kissed her. She has hugged me and kissed me from the first day that she came in there for her first interview.

She came in there with a little short skirt on and she came up and hugged me and kissed me—well, she [1450] didn't kiss me then, she has hugged me though every time.

And I didn't hire her because I didn't—I didn't—I didn't think that I needed to hire her right then. But she kept coming back and I finally hired her.

And she hugs me or did hug me everyday when she came over there, which was not a weekly basis but every time she came in she hugged me and I hugged her and that was just our way of greeting each other.

Q. She said you kissed her on the lips, did you ever do that?

A. I never kissed her on the lips.

Q. Where did you kiss her?

A. It seems like on the cheek or something like that.

Q. Did she ever reach a point where she let you know that she didn't want you to do that?

A. Yes, sir, she did.

Q. Tell us about that?

A. She had been not so religious up—for a long period. And then she became a religious person and she came in and told me, she said, I've—I have started going to church. I'm a very religious person now. I feel strongly in my religious beliefs. And it makes me uncomfortable to hug you or kiss you or whatever, you know, touch. And I said, I'm sorry if [1451] I've offended you, I want to apologize and it will never happen again. It has never happened again.

Q. Do you recollect something your ex-wife, Joan, testified to a meeting with juvenile officers at the Peabody Hotel in Memphis sometime after that?

A. Yes, sir.

Q. And what is your recollection of what happened with you and Sandy Sanders?

A. We went in there and they were over on one side of the room. We came in another door on the other side of the room. And she saw me and she came over there and gave me a hug, which, you know, that was not in the office, that was not in the courthouse, and that was a different situation.

And another time we were at the Dyer County Fair, I was there with my daughter, Leigh Ann, and she came up and hugged me. But that—it has not happened any more in the courthouse.

Q. Did the fact that she had hugged you prior to this and on these occasions and you had hugged her have

anything to do with you being the judge or any power that you may have had over her in your mind?

A. None whatsoever. I'm a hugging type person. Women hug me in front of my wife and it upsets her. And I hug women. They hug me. And it just is a [1452] natural thing, it just happens, seems like in Dyer County maybe more than other places, I don't know.

Q. What about Mrs. Sanders' job performance from the time she was hired, was it satisfactory or unsatisfactory?

A. Mrs. Sanders had a hard time learning how to do the job.

She would do something one day and I would correct her about it. I'm the type [of] person that doesn't say anything as long as you are doing it right. If you don't do it right, I let you know about it. I don't lose my temper or anything. I don't have a temper to speak of but I let you know about it.

She would do something, I would say you've been told not to do that, you've been told to do it this way.

She would say, oh, I forgot or I didn't understand it that way. It won't happen again. Well, then in another month it—probably the same thing would happen again. It's been that way constantly and I've told her about it. I've continuously told her about her performance and her position.

Q. Did you ever take away any supervisory powers from her, you had previously given her, in retaliation against her?

[1453] A. No, sir. I tried to give her supervisory powers when she came. When I hired her the first time, I said, look, you have the criminal justice requirements, the college credits. Rob Hammond's working over there, he has a high school education, he does not have the criminal justice requirements. You will be in charge of the office. You will be over him. You will make the decisions. You will tell me what's going on.

She said, I don't know whether I can handle that or not. I said, well, try it and if you can't handled it let me know.

She never assumed the responsibility. She would not be a supervisor. She would not be a boss. She did not want to tell anyone what to do. She wanted to get along with everybody and just go along without any controversy.

Rob Hammond quit after some period of time, I don't remember how long after she was there. And I hired Lisa Golden. Lisa caught on quicker than Sandy, and she kind of took over the operation of the juvenile office and Sandy said, well, you are just listening to Lisa all the time. I said, well, Lisa knows what she is talking about. People came to me and said Lisa is doing a good job, we want to [1454] recommend Lisa to you. Nobody ever came to me and said Sandy is doing a good job, we want to recommend Sandy to you.

So Lisa quit and I hired Edward Barr. He was a black guy, and Sandy didn't like that because I hired him and I didn't put him over her, but I put him on the same level with her, and that's when this controversy about me taking her supervisory powers away from her came up because I put him equal to her.

Q. She said she was just a small, in her direct testimony, just a small town girl and she didn't think anyone would believe her over the judge, did you hear her say that?

A. Yes, sir, I heard her say that.

Q. What's your response to that?

A. Well, I—I think that there were enough people in Dyer County who were after me that would have listened to anybody, and all she had to do was to complain to Jim Horner, he was the district attorney at the time and had run against my brother and beat him twice before that time, and I don't think that she would have had any problem, or Stan Caviness, who was a city police-

man worked with her regularly, he worked for juvenile with the city police department.

Joey McDowell would have been—been glad to talk [1455] to her about it, he was the city investigator. She had a lot of people that would believe that I had done something to her if she had tired—tried at the time.

Q. Did a controversy arise over sick leave, Judge?

A. Yes, sir.

Q. What was the nature of that?

A. The county had never had a sick leave policy until a couple of years ago or three years ago. And they drew up a handbook, when Don Deals got elected county executive, he decided he want to have a handbook for the county.

So included in that handbook was a sick leave policy. He said, well, we have never had one before so people who have worked here five years or whatever should be given some benefit of the sick leave time that haven't been able to accumulate up to this point.

So the county commissioners included in that handbook, I think it was 30 days accumulated sick leave up to that point, and they said that everybody that has been there for certain periods of time automatically has this amount of sick leave to begin with.

So, Sandy and Tina Brock, who was the secretary in the juvenile office, came to my office together and [said we've got 30 days sick leave * * * we want to start taking it a day or two a month just as a day off.]

* * * * *

[1460] A. I think you asked it and I didn't respond. I think that is when we took the—

Q. (Interjecting) Okay. Would you go ahead and tell us what you can about that, please?

A. Yes, sir. It is a County car furnished by one of these federal grants. And the County furnishing the gasoline. It is to be used for official business only. That has been told to each of them.

On a few occasions it was reported to me that she was using it for her personal business. I contacted her about this and she admitted that she was using it for her personal business. She had been going to the grocery store, going to a tanning salon to get her sun tan. And one Saturday I went to the city park and she was out there at the city park at a children's birthday party in the County car.

Q. Did others have access to that particular car?

A. At that point we had two County cars and she drove one and the other officer drove the other one. Nobody else had access to it.

Q. Did this cause any controversy between you regarding your relationship with this woman?

A. Yes, sir. She didn't like me telling her not to use the car. It upset her.

* * * * *

[1463] A. And I told her that somebody had to be in the office in case of an emergency situation or to handle the day to day business. I think maybe the grand jury was in session or I had been indicted, one. I think the grand jury was in session.

So, she called somebody down here in the U.S. Attorney's office. And I think they called you and said that I was mistreating her, wouldn't let her go to a conference that she wanted to go to.

Q. Was that the fact at all?

A. No, sir, it was not the fact at all. She could go to a conference any time during the year when we had two employees there. But I didn't feel that she could go then because we didn't have anybody there to run the office if she went.

Q. You heard her testify that she had to get her credits by listening to tapes. Do you know if that is correct?

A. I don't know whether she even got her credits or not. But I knew she could get her credits some other

way. There are a lot of ways to get credits. And she told them, so you told me, that if she didn't get to go to that conference then she would lose her commission, that she would not be accredited for that year.

Q. During all of this problem with Ms. Sanders, even after you found out she was testifying against you in the [1464] grand jury, did you ever retaliate against her in anyway?

A. No, sir, I did not.

Q. Did you ever seek retribution in any way?

A. No, sir, I did not.

Q. Did you ever fire her?

A. No, sir.

Q. Is she still working there?

A. She is still there.

Q. Judge, is there anything else about Sandy Sanders that I have neglected to ask you about that you think you ought to testify about?

A. One other item was the DUI school that she and Rob Hammond set up. When I find a juvenile guilty of DUI, I order him to go to a DUI school. There were two or three different places that provided that service. I think it maybe cost them thirty dollars, or something like that. So, she and Rob Hammond got together and said, "Well, we can do the DUI school, we can make that thirty dollars ourselves." And they set that up so they could make some money on the side.

Q. Did you have any objection to that or was there any controversy engendered because of that?

A. Well, it wasn't working out and I told them that it wasn't going to work out. But they continued to do it until they decided to quit.

[1465] Q. Now, Judge, do you know Sandy Attaway?

A. Yes, sir.

Q. And what is your recollection of the first time that you ever met Sandy Attaway?

A. I don't really remember where I first met Sandy. It was probably at my house one Saturday when she came swimming over there with my daughter.

Q. Was that something that she did more than once?

A. Yes, sir, she did that several times.

Q. And do you know whether or not your daughter's husband Larry and Sandy Attaway's husband had been friends over the years?

A. I knew they were associated with one another. They went hunting together, but I don't know how good a friends they were.

Q. How did the name Sandy Attaway come to the attention to you as a possible candidate for the secretarial position?

A. I was at my daughter's house and my son-in-law's house and my grandson, little David's house, and she called and was telling Leigh Ann that she needed a job and would she put in a good word with her—for her with me. I just happened to be sitting there and Leigh Ann said that is who it was and that is what it was about.

Q. What did Leigh Ann tell you about her?

A. She said that she needed a job and she thought I [1466] ought to hire her but she really didn't know whether she was qualified or not.

* * * * *

[1467] A. Because of my daughter. She recommended her.

Q. You wanted to give her a chance?

A. Give her a chance, see if she could do the job. Each time I hired someone, it was for a six month probationary period.

Q. Was that standard procedure in your office?

A. That is standard procedure.

Q. You heard Sandy Attaway mention that you began to do things sexually to her. You touched her and hugged

her and did things that she didn't want you to do. You've heard all of that testimony haven't you?

A. Yes, sir.

Q. Judge, is that true or false?

A. It is false.

Q. Did you hear her statements about what she calls suggestive statements that you made to her?

A. Yes, sir.

Q. For instance, I believe she testified that she answered the phone one day and there was—or somebody came in to see you, some man. And she told you on the intercom there is a gentleman here who wants to see you. And you replied there is a gentleman back here that wants to see you. Do you recall that?

A. Yes, sir, I recall her saying that. I don't recall doing that, but I could have. I could have been waiting on [1468] her to bring me a file or come back there for any reason. I don't remember that particularly.

Q. You heard her say that in regard to the Amway plan that she didn't really want to do it. And you loaned her the money and said you don't even have to pay me back, that you all could work it out. Is that true or false?

A. Well, I don't think she said I loaned her the money. I think she said that I offered to loan her the money. And I did. She was really in a financial bind. Her husband had quit his job. He was working second shift. And she told me that he was jealous of her. She had a friend that she talked to a lot and he said he just couldn't work. And would call home between his breaks and at supper time and he was worried about her all of the time. So, he quit his job. And she was telling me all of these things and said she needed some help financially. So, I said, "Well, my wife is in this network marketing program and it looks like a good thing, you ought to look into that." She said, "Well, I don't have the money." I think it cost a hundred and nine dollars. And about sixty dollars of that was for products and about forty-nine dollars for the fee to get in

it. And she said, "I don't have the hundred and nine dollars." And I said, "Well, don't worry about that, if you want in it, if you think it is a good deal, I'll let you borrow the money and you can pay me back."

[1469] Q. Was there anything in your mind but just an offer to try to help her?

A. That's all that was.

Q. She testified that on one occasion you hit her on the rear end.

A. I have never hit her on the rear end. I have never grabbed any of her private parts.

Q. By the way, that reminds me. There was one thing I meant to ask you about with Sandy Sanders. Did you hear her testify that you grabbed her and sexually molested her as she was in the courtroom, coming out of the courtroom. What is your recollection of what she said?

A. My recollection is that after we finished juvenile court one day, she said she was going out the double doors going out of the courtroom and I walked up behind her and grabbed her buttocks. And that is absolutely not true. And she said the DA was standing there. Some lawyers were standing there and some other—Stan Caviness and Mark Grant, the City Juvenile Officers were standing there. And that is absolutely not true. I have never grabbed that girl on any private part.

Q. Back to Sandy Attaway. She testified that she was trying to get some time off and you told her, "If I give you half a day off, what are going to do for me." Do you recall any statement like that?

[1470] A. No, sir. I don't ever recall making a statement like that.

Q. Did she ever talk to you about her personal problems?

A. Sandy Attaway?

Q. Yes, sir.

A. Yes, sir. Like I told you, she talked to me a lot about her personal problems.

Q. What about her job performance, how would you evaluate her as her employer?

A. She tried to do her job. She worked hard at it, but she had a hard time doing it. The big thing was setting the cases properly. That is probably the—well, answering the telephone and setting cases are probably the primary things that have to be done in that job and she had a hard time doing that.

Q. Who did she have to deal with in setting cases?

A. Lawyers. She talked to all of the lawyers in the County and surrounding counties, setting their cases and trying to schedule them where one case wouldn't run into the next case. Where they wouldn't overlap.

Q. Is that for the convenience of the court as well as the lawyers?

A. It was really more for the convenience of the lawyers and the litigants than it was for the court. Since then we have started having court all—come in at 9:30 on Fridays [1471] and that way the lawyers are not [in]-convenienced so much and the clients are not either, but we get through with them a lot quicker that way.

Q. In addition to scheduling problems, did she have any problem answering the telephone?

A. Yes, sir, she did.

Q. Like what?

A. She just couldn't handle telephone conversation like I thought she should handle it. She got things confused and mixed up when she was trying to talk on the phone.

Q. Did she have personal visitors come to the office?

A. Quite often. She had some young guys that came in there and one in particular that sat there for an hour or so at a time and would detract her from her duties sitting there talking to him.

Q. There has been some talk about the way she dressed. Would you address that for the jury?

A. I think that is the ultimate thing that caused her to quit and walk out. We had a conversation one morning, I think it was on a Friday, that she set a bunch of cases when I had already sat a case that was supposed to take an hour. She sat a bunch more cases on top of that one. When I walked in the courtroom to hear that one case, there were about ten other lawyers and their clients sitting there waiting to go to court. And I knew I was going to be an [1472] hour on that case. So, it was really kind of confusing at that point.

* * * * *

[1473] When it first came up, I went to my daughter, Leigh Ann, who worked upstairs in the Clerk and Masters Office. And I said, "Now, look, you asked me to hire her. I hired her." I am asking you now to talk to her about the clothes she is wearing." So she said she would. They—I understand two or three of them upstairs had mentioned to her that she should wear different type clothes to be the secretary down there. So, when I told her that, she blew up. I said, "Things are just not working out right, and we are just going to have to make some changes." She walked out, went into her office and got her keys and brought them back to me and just handed them to me. And I said, "What are you doing?" She said, "I'm leaving." And this was about nine o'clock on Monday morning. And I said, "Well, don't you want to stay until you can try to find you another job?" She said, "There is no point in it, I am leaving." And she left. And I think her husband had a job that depended on the weather and she didn't have a job at all after that.

Q. Did you fire her?

A. No, sir. I never even mentioned changing jobs.

Q. What was your intention?

A. My intention was to try to get her to do better.

[1474] Q. And if she couldn't?

A. If she couldn't, ultimately she would have been asked to leave.

Q. Did you take any retribution against her for that at all?

A. No, sir. No, sir. On the contrary, she came back in a few days and said she needed to draw unemployment because she didn't have any money, would I sign an unemployment slip saying that I laid her off. And I said, "Well, I didn't lay you off." I said, "You quit voluntarily." She said, "Well, I can't draw unemployment if I quit voluntarily." I said, "Well, you draw it up and I'll sign it." So, I signed it.

Q. Did you ever give her a letter of recommendation of any kind? Did she ever ask for that?

A. I don't believe she ever asked for it. I think she came back later and asked me—excuse me—to go upstairs with her and talk to the DA's Office to see if I could help her get a job up there. She had understood there was a vacancy up there.

So, I walked up there with her and Billy Hall was standing in the office when we walked in the door.

Q. Who is Billy Hall?

A. He was the investigator for the DA's Office at that time. And I told him—

Q. (Interjecting) Let me ask you this. This would have [1475] been—I believe the indictment alleges February through May 1991. Was this during the brief period of time when your brother was the District Attorney?

A. He took office September 1st, 1990 and he was the DA until September 1st, 1991.

Q. But was it during that period?

A. Sometime during that year, he was physically incapacitated and he appointed Joe Boyd as Acting District Attorney. I don't know which period this was.

Q. You went to Billy Hall and what inquiry was made of Billy Hall?

A. I told him that she was looking for a job. I understood that they had an opening in the DA's Office. Of course, I told her on the way up there. I said, "I want

you to know that I don't have any influence in the DA's Office." She said, "Well, just go with me anyway." So I went.

And I walked in and Billy Hall said, after I told him what we were doing, he said, "I think that has already been filled, I don't think we have a vacancy up here." So, I left and left her standing there.

Q. Did she ever call you back on the phone about a power of attorney? And if so, would you tell us about that?

A. Yes, sir. She called me two or three times after that, came and visited with me two or three times after [1476] that. But on this one occasion she called me and said—well, while she was working for me she had told me that she was living in her father's house. And he didn't live there, he was off in some other county or town somewhere. And he came back and she had to move out and had to rent her a house while she was working for me. So then after she quit work and was gone for a few days, she called me and said that her father was going to leave town again and he wanted to give her a power of attorney so that she could do what she needed to do with the house and he was going to let her move back into the house. And I said, "Okay." She said, "Can you do it for me?" I said, "No, I can't do it for you, I cannot practice law but there are some forms here in the courthouse that I can show you and you can type up your own power of attorney." And she said, "Okay, I'll be over there." I think she had gotten a job at First Citizen's by then. She said, "I'll be over there on my day off and type this up." I said, "That's fine, just let me know and I will have the form for you."

Q. Judge, is there anything else about Sandy Attaway that you want to tell this jury about that I have overlooked?

A. I can't remember anything else.

Q. Let's talk about Vivian Archie. You know Vivian Archie, of course?

[1477] A. Yes, sir, I know Vivian Archie.

Q. Do you recall how long you have known her or under what circumstances you met her?

A. I have known who she was probably all of her life. She lived in the same neighborhood that I lived in and she was probably born when they lived on a farm in Western Dyer County. And they moved to town and built a house within two or three blocks of where I lived.

Q. Do you know her mother and father?

A. Yes, sir. I am not real close friends with them but I know them.

Q. Lived in the same neighborhood?

A. Yes, sir.

Q. Did Vivian Archie come to you on one occasion asking for a job?

A. Yes, sir, she did.

Q. Do you recall about when that would have been?

A. It seems like it was about September or October of 1990?

Q. The indictment alleges about October—one count September of '90, one count October of '90. Does that sound about right?

A. That's about right.

Q. And tell us the nature of that conversation, Judge?

A. She came to my office. Well, she came from the [1478] juvenile office. I think she had been over there with her friends. And she came from the juvenile office to my office and had an application. And said she wanted to put in her application for a job.

Q. What job did she want?

A. My secretary's job.

Q. You said she had been to the juvenile office. Did she know someone who was working over there?

A. Yes, sir. She and Lisa Golden were best friends.

Q. And had they sent her over to apply for this?

A. They told me that they had sent her over there.

Q. So, did she have an application already, you mean?

A. She had an application when I first saw her. The first time I saw her, she had an application.

Q. And what was the nature of your conversation that first time?

A. I told her that I didn't have a job available, that it had already been filled. She said, "Well, I am a good worker." Said, "I grew up on the farm, I've driven tractors, combines, done manual labor, I can do anything and I need a job." She said, "I have been staying with my parents and my father and I have gotten into a physical fight and I had to leave there because I didn't want to have to fight with him." "He had a stroke and I didn't want to have to fight with him, so I left and moved into a house [1479] behind Dr. Doug Haynes' house." I believe he took her in. And she said, "I'm desperate, I have a young daughter and I'll do anything for a job, no questions asked, nobody will ever know it but you and me." If she said that one time, she said it five time.

And I said, "Well, I don't have a job, I've already filled my job." She said, "But I've got to have some help." I said, "Well, I'll keep my eyes open and if I see anything that is available, I'll let you know."

Q. You said she mentioned having problems with her father. Did you bring up at any time during that conversation something about her child?

A. Yes, it seems like when she mentioned having a fight with her father, I said, "Well, he came by here the other day and wanted to know what to do to file papers to get custody. And I told him the first step would be to get him a lawyer." And she said, "Well, we are fighting and I don't want him to have custody."

Q. Why did you bring that up? What was the purpose of your saying that?

A. Just because he had been by there, no ulterior motive, no reason except that she told me that she was fighting with him and I told her, "Well, he is talking about taking custody of your child, so you need to be aware of that."

[1480] Q. Did you talk to her father about the details of the case?

A. No, sir, I did not. I just told him that he needed to get him a lawyer. He wanted to know how to do it. He didn't ask me. He didn't talk to me about any details or even whether I would do it or not. He just told—he was walking into the courthouse and I was coming out of my office and he didn't even come into my office.

Q. Do you have a standard procedure in dealing with people when they ask you about a case?

A. Yes, sir, I surely do.

Q. What is that standard procedure?

A. If they have a case in my court, I tell them that if they want to talk to me about it, then I'll recuse myself from that case, but if they want me to hear the case, they better not talk to me about it. They better let their lawyers do the talking in court.

Q. Do you recommend anybody to get a lawyer if they don't have one?

A. I tell them all when they come to me and talk about filing some sort of case, that I can't do anything about it, they will have to get a lawyer before I can even hear the case.

Q. Was that the extent of your conversation with Vivian Archie about what her father had been by your office and [1481] complained?

A. That was the extent. And he wasn't coming to my office, he was just coming in the courthouse and I was coming out the door and ran into him.

Q. So he didn't come in your office at all?

A. No, sir.

Q. Did you say that to alarm her?

A. No, sir, I surely didn't.

Q. Did you say it to try to show what kind of power you had over her?

A. I didn't even think about it being any power. I didn't think that there was even a case involved that

would concern me or her either one. I thought that was a family problem, that they were fighting between themselves.

Q. We'll come back in just a moment to where we were, but as a matter of fact, later it did develop into a custody battle, did it not?

A. Yes, sir, it did.

Q. And what position did you take in regard to that?

A. Well, what happened was that her mother was keeping her child every day while she was out trying to get her a job, or whatever, and she took the child and brought the child to Memphis.

Q. The mother did?

A. Her mother did.

[1482] Q. Vivian's mother?

A. Judy Forsythe. And by the way, Judy Forsythe had applied for a job with me too and I didn't hire her either. But she came to Memphis with the child and wouldn't let Vivian know where she was. So, Vivian got all excited about that. She wanted to see her child. She hired Charles Kelly, I believe, to represent her and she had a warrant issued for her mother's arrest for kidnapping. And they came to Memphis because Judy filed a petition in Juvenile court in Memphis to give her custody of Vivian's child.

They had a hearing on it. A. V. McDowell was the juvenile court referee and he said this is a case that needs to be held in Dyer County because all of the parties live in Dyer County. He referred that case to Dyer County juvenile court. By then this was on up in November sometime. Vivian and I had been to Nassau with Dr. Warner. Vivian had been coming up to my apartment building where Dr. Warner rented a room on a regular basis. We had become friends. And when they sent it back to Dyer County, I told Ralph Lawson to hear it because I wasn't going to get involved in it.

Ralph Lawson was in charge of it. I think he testified he didn't really have to have a hearing on it and Vivian finally just dropped everything.

Q. All right, sir. You stepped out of it?

A. Right. I got out of it completely. She had a [1483] divorce too. I think she testified it was in my court sometime before that. It was an uncontested divorce. And when all of this came about, I entered an order of interchange in that divorce case November the 15th, 1992. I believe you have the file on that with that order in it where I would hear nothing else concerning Vivian Archie at all.

Q. Back to her initial visit to you in our office applying for the job. You heard her testify that when you mentioned her father and talked to you that that made her very fearful that you were going to take the child away?

A. I heard her testify to that but she never even commented about that when we were in my office.

Q. You heard her testify as a result of that, you made sexual advances on her and forced her into a compromising position and made her do oral sex upon you. You heard that, didn't you?

A. I heard that too. That is totally untrue.

Q. You heard some other testimony that suggested that she told Dr. Warner that though she never said that you forced her to do anything, that you had had a sexual relationship with her. Is that testimony true or false?

A. That is untrue too. I believe she said that she told him that I asked and she complied, I believe was his words and that is untrue.

Q. I am not asking you whether or not she told Dr. [1484] Warner that, that she might have done that, but whether or not that there was a voluntary sexual relationship?

A. No, sir, that was not true either. And I heard about that later and I confronted her with it one day.

And I said, "I have been hearing that you have been saying things, telling Dr. Warner things." And she said, "Well, I will tell him different." She said, "That was not true and I will tell him that it was not true."

She came back later and said, "I told him, everything is straightened out, so there is no problem." Now, this was after the second incident.

Q. Passing on to something else, after she said, of course, she left your office after that incident, you heard her testify that she cleaned herself up in your bathroom?

A. Yes, sir.

Q. And that you offered her money. Is any of this true?

A. No, sir.

Q. Did you in fact talk to Dr. Warner about it at some point later?

A. Yes, sir. We went to Nassau together.

Q. This is a trip that just you and Dr. Warner had made?

A. Yes. And he was telling me that he needed a secretary, or receptionist, or somebody, to work for him, did I know anybody. And after Vivian had come in there and told me what she told me, I had told two or three people [1485] what she had done, how she had said it, how many times she had said it, and all of that.

Q. Why did you tell them that?

A. Because really it was a shock. It was frightening, really, for her to come in there and say, "I'm desperate, I'll do anything, no questions asked, nobody will ever know but you and me," just over, and over, and over. And so I told some people that. And they said, "Well, you don't know her reputation, do you?" Of course, they told me what her reputation was.

Q. Well, let me ask you about this first trip to Nassau and then we ought to clear that up. Why were you and Warner going to Nassau?

A. He owned a box company down there, a cardboard box company in Nassau. And he was having lots of problems with it. They were wanting some more money in it. He wanted to know if I wanted to go down and be an investor with him in it. So, I said, "Well, I will go look at it and see what you have got." And I went and I—

Q. (Interjecting) Just you and Dr. Warner?

A. No, there was another man along.

Q. All right. Three men had gone.

A. And I told him I wasn't interested. They wanted seventy-five thousand dollars more to keep it going. And I think he already had about six or seven hundred thousand [1486] dollars in it. And I said, "The best thing for you to do is just to put your seventy-five thousand in a CD somewhere and not put any more money in that box company." And he finally agreed to that.

But on that trip, he was asking me about somebody to work for him. I told him what I had heard about Vivian and what she had told me. He said, "Well, maybe I need to talk to her." I said, "Well, maybe you should, it is up to you." So, he said, "Would you call her and set up an interview with me." I said, "Yeah, I sure will," and I did.

Q. What did you tell her when you called?

A. I told her—I asked her if she was still—well, I didn't really talk to her then. She came by and I told her if she was still looking for a job, I had her an interview. And if she wanted the job, she could go talk to Dr. Warner.

Q. You heard her testify in this courtroom that a second time, then, you forced her into the same kind of oral sexual activity?

A. Yes, sir, I heard that.

Q. Is that true or false?

A. That's false.

Q. Then did you then hear whether or not she had taken this job with Dr. Warner?

A. Yes, sir. She left my office. And she testified she got there about 12:15 and stayed there about fifteen minutes [1487] and left my office and went to Dr. Warner's at 12:30. And he interviewed her and hired her that day and let her stay on with him the rest of the afternoon to learn what the job was all about.

And then she had a friend that she was going to babysit for the next day and then she was going to come to work the day after that on a regular basis.

Q. She called you and told you that?

A. He did, she didn't.

Q. Shortly thereafter, did you go out and meet them for lunch at a Mexican restaurant?

A. Well, Dr. Warner and I got to be pretty good friends after we went to Nassau that first time. And we met for lunch quite often and Vivian would come in her car a lot of times and have lunch with us.

Let me go back to Dr. Warner.

Q. Yes, sir.

A. When she left my office at 12:30 and went to his office and was interviewed for the job, she was actually going to her family doctor's office. He had testified that he was her family doctor that had operated on her and treated her since she was a young child. And she went into his office as a doctor, made no complaints, said nothing.

* * * * *

[1490] Q. Was there anything sexual that went on between you [1491] two at all?

A. Nothing sexual whatsoever. One time I remember I was with her in the coffee shop and he was gone somewhere out maybe to—

Q. (Interjecting) She mentioned that she saw you on the beach one day.

A. Yeah, I went—well, he was there too. He was walking up the beach and we were separated and I went down where she was and then he walked up about ten minutes later.

Q. Did she appear to be apprehensive about anything at all about you being there alone with her?

A. No. She was very friendly and talkative and we discussed every kind of thing in the world. That is what I was fixing to tell you. One night, I remember, we were in the coffee shop and she was telling me that Dr. Warner had wanted to buy her a bracelet and a ring. And she just didn't want to take his money, she just didn't want to take advantage of him. And then she was asking me what to do about that. I said, "Well, if he wants to buy it for you, let him buy it for you. I mean, he wouldn't offer unless he wanted to." He came back to the table in about five minutes and she said, "Let's go." She was gone maybe ten minutes and came back with a bracelet and ring on. So, we discussed things on a friendly basis, there wasn't any apprehension, there wasn't any fright to the trip.

* * * * *

[1493] Q. Regular court orders, cases Mr. Kelly had there?

A. Yes, sir.

Q. And other lawyers in his firm?

A. Yes, sir.

Q. Did she come into your chambers to have those signed?

A. Yes, sir. She came into my secretary's office and she came into my chambers office.

Q. Did she show any fear or any apprehension at all?

A. Never a bit.

Q. Did she ever get angry at you because you didn't hire her for the job that she went to the interview on?

A. I think what she got angry at me about was because I wouldn't hear her case.

Q. Are you talking about child custody case?

A. Yes, sir. She might have gotten angry about the job too, but she got hired shortly thereafter, so I don't think she would have. She might have stayed mad about that, but—

Q. (Interjecting) The child custody case, though, would have been after you all had been friendly with—

A. (Interjecting) After we had been to Nassau and everything else before that ever came up.

Q. And you said you still refused to hear her case?

A. Right. And I told her and I told Dr. Warner both on that trip. I said, "Now, any legal matters that you all have, I will not be able to hear them because of our [1494] association." * * *

* * * * *

[1499] Q. How did you come to meet Patty Mahoney?

A. I probably met her several years ago when she was working in Bubba Agee's law office.

Q. Working in whose law office?

A. Bubba Agee.

Q. Is that a lawyer in Dyersburg?

[1500] A. Yes, sir.

Q. A friend of yours?

A. Yes, sir.

Q. Someone you have known a number of years?

A. Yes, sir.

Q. And what was she doing for Bubba Agee, do you know?

A. I think she was a secretary for him.

Q. Did she at some point—I believe the indictment alleges in Count 5 matters occurring in September and October 1990. Did she at some point apply for a job as your secretary?

A. Yes, sir, she did.

Q. And did you interview her?

A. I did.

Q. And you hired her?

A. I did.

Q. Was there anything particular about her that—her qualifications that caused you to hire her or her recommendation? Anybody recommend her to you?

A. I don't recall anybody recommending her to me. She was an attractive person, had a good personality and dressed properly and appeared to be the type person that would do a good job in the judge's secretary's position.

Q. Did she have a good personality, you say?

A. Yes, sir.

[1501] Q. Did she seem to want the job?

A. She definitely wanted the job.

Q. Did she give you an indication as to whether she needed the job badly?

A. Well, I don't think she gave me an indication that she needed it badly. She told me that she was receiving a thousand dollars a month child support for her children from her husband who lived in Kentucky and she just wanted a job.

Q. And how long did she work for you in total?

A. She testified about three weeks and I couldn't argue with that.

Q. Okay. What was the problem?

A. She was not qualified to be a secretary. She had real difficulty doing what she was supposed to do. Of course, when she came in, like all of the rest of them I got her to type a letter. She could type. I told her each of her duties. I went to her. We sat down, we talked about them. We went over her duties and that is my customary way of doing things. So, I said, "Go to it, the other girls around here will help you. If you have any questions ask them."

She started working and the next day I came in and I had to tell her the same things over again that I had told her the day before. She didn't do those things. She didn't remember what I had told her. The third day she came in, I [1502] told her the same things over. * * *

* * * * *

[1504] I don't mind telling anybody two or three times what I expect, but when it just keeps going over and over, I tend to get a little bit upset about it.

Q. Did you ever, as a result of that, call her in and tell her it wasn't working out?

A. No, I don't think I ever told her that. I think that she gathered that from me letting her know how I felt about things a time or two. But I don't believe I ever even said things are not working out you are going to have to start looking for another job, or anything like that. I think she told me, "I just cannot stand the pressure, it is too much pressure on me." She said, "I have just been through a traumatic divorce and my nerves have just been shattered all to pieces and I am just not able to take the pressure."

Q. She liked the job, I take it, except for the pressure?

A. I think she did like the job.

Q. She testified, I believe, that she liked being with the lawyers and things like that?

A. Right.

Q. Did you fire her then from that job?

A. No, sir, she quit.

Q. Do you know if she got another job following that?

A. I am not sure whether she did or not.

Q. Did she ever contact you or call you at the office or [1505] at home after she quit the job with you?

A. Yes, sir, she contacted me and called me both at the office and at home. We talked on the phone quite a lot after she left.

Q. What was the nature of these conversations?

A. We just talked about everything. We—like she said, I am a good listener and I just sat there and listened to her talk. And she told me about all of her love life, her people that she wanted to go with, people that she didn't want around her but kept coming around here.

She told me about her ex-husband coming to town and her putting a tape recorder where she could—

THE COURT: Excuse me a second, Judge. I have already ruled on that particular question.

THE WITNESS: All right.

BY MR. EMMONS:

Q. I am not asking for specifics. Did she once—well, I will make my question more narrow specifically. Did she once tell you about a man she was going with who she referred to as being a quote, "cock handler"?

A. Yes, sir. She talked to me about that. Called his name, said she wasn't going to date him because that is what she called him.

Q. And some of these conversations were after she had quit the job?

[1506] A. They were all after she quit the job, those conversations were.

Q. Did you have any complaints about the way that she got along with the lawyers personally?

A. No, sir, she got along. She is a very personable type woman and she looked good and seemed to get along with everybody good.

Q. She has testified, and you heard her, in this courtroom that you continually sexually touched her. You have heard that testimony, have you not?

A. Yes, sir, I have heard that.

Q. Judge, is that true or false?

A. That is false.

Q. As a matter of fact, I believe there is one point in her testimony, she characterized it as being a touch a day?

A. Yes, sir, I heard that. We hugged and we talked and did all of that every day. But I have never touched that girl sexually at any time. Never grabbed her breasts or buttocks or any other private part of her.

Q. Did you first—is this the lady that you first met over at Bubba Agee's apartment?

A. No, sir. She worked at Bubba Agee's law office.

Q. Okay. That is Fonda Bandy you met over there?

A. Fonda Bandy is who I met over there.

* * * * *

TRIAL TRANSCRIPT

[December 14, 1992]

[1544] THE COURT: All right lawyers, are we ready to proceed?

MR. EMMONS: Your Honor, I have a couple of matters, sort of house keeping matters. Number one, I'd like to remind the Court we have a motion for a mistrial still pending to be ruled on. And I do have some special requests that I can give the Court at the first recess. Number three, we have prepared transcripts of this other Lisa Couch tape that has not been played, the one in the Chancellor's—and we are going to ask that that be allowed to be played to the jury along with this transcript of it. The government needs to look at this transcript copy to be sure it is not anything we need to talk about.

THE COURT: Have you given them a copy?

MR. EMMONS: I'm doing that right now, Your Honor. I think they had a copy before. Well, I'm sure they have. Would the Court like a copy?

THE COURT: Yes, sir.

(Whereupon, a copy of the above described transcript was passed to the Court.)

THE COURT: Have the two sides met to discuss the accuracy of the transcripts?

MR. PARKER: No, sir.

THE COURT: Has the government prepared its own [1545] transcript?

MR. PARKER: No, sir.

THE COURT: Does the government have objections to the use of the transcript?

MR. PARKER: Yes, sir. We haven't had time to review the tape. As the Court may know, we got to looking for the tape before trial and somehow it had been given back. We had marked it as an exhibit in a hearing and somehow given it back to the defendant and we

didn't have the tape before trial. And at this point, we were under the impression that they wanted to use the transcript, so we haven't had time to go back and go over the transcript with the tape in detail.

THE COURT: Who has the tape? Do you have the tape?

MR. EMMONS: No, sir. That's the question we'll all—it was introduced into evidence at that bond hearing and the clerk of the court somehow apparently told the government that we had taken it back. I have actually no recollection of that and I don't think I could have done it had I wanted to, once it had been put into evidence. We have a copy that we kept. It is a true and accurate copy and prepared the transcript from it. We can testify to that. The government heard the original copy of the tape that day in Judge Breen's court and we had this transcript then that [1546] Judge Breen used and they made no objection to the transcript at that time. They have their copies of that tape since that time. The original, as far as I know, has been misplaced.

MR. PARKER: But we have not had a copy of that tape since that detention hearing. We only got a copy of the tape the first part of this trial. That is why we were concerned, we were out trying to get the exhibit and get it copied, and stuff like that. The clerk's office says it went back to Mr. Emmons, or the defendant, or somebody, and they don't have custody of it. And so we haven't had a copy to work off of and prepare a transcript from for us to compare. With all of the problems going on with tapes in this case, and we got such short notice, we would object to the transcript being introduced. The jury can hear the tape. We have no way to—

THE COURT: (Interjecting) Is the tape clear?

MR. EMMONS: Not nearly as clear as the last one, Your Honor. That is one of the problems. It is more like one of those government undercover tapes that the government does this on all of the time, where they submit

transcripts and the court instructs the jury that they don't have to take the transcript as the evidence, with the tape just as their assistance. We are just asking the same thing here.

THE COURT: But I also don't ever do unless both sides have had a chance to compare the transcript to the tape [1547] and be heard on whether it is accurate or not.

MR. EMMONS: Yes, sir. I believe they are saying that in addition to the fact that they had a transcript three or four months ago, they have had another copy made. They have had a copy of the tape since before this trial started.

THE COURT: Well, I hear that, Mr. Emmons, but the fact that they have had doesn't mean they know you are going to use it. They are entitled to have a chance to compare to the tape.

MR. EMMONS: Certainly.

THE COURT: And it might have helped if somebody had mentioned it Friday so that it could have been done over the weekend, as I suspect a lot of other things were done.

MR. EMMONS: Yes. Well, it should have been mentioned Friday.

THE COURT: When are you planning on getting to it?

MR. EMMONS: Well, it is time for it right now, Your Honor. We can wait until—

THE COURT: (Interjecting) Wait until when?

MR. EMMONS: Sequentially we are talking about Lisa Couch. We are through with her—with Judge Lanier's direct testimony with regard to Lisa Couch once this tape is played.

THE COURT: Well, is she the next one up?

[1548] MR. EMMONS: We just finished her, Your Honor. We were in the process of finishing her. I had announced to the Court—

THE COURT: (Interjecting) Oh, yeah. Yeah. I really do wish you had said something about this Friday. How long does the tape last?

MR. EMMONS: Very short.

THE COURT: Well, you all play it and compare it. Let's find out if the transcript is any good or not, and let's do it in a hurry, otherwise I am going to keep it out.

MR. EMMONS: Yes, sir.

MR. PARKER: Part of the problem is, Your Honor, you know it takes a while to compare these. Like I said, we had an expert examine the last one to find a fault in it.

THE COURT: Well, I heard what you are saying, but he is entitled to put on his evidence too and all I'm talking about now is whether the transcript can be used.

(Playing tape)

THE COURT: I need to listen to it again. Go ahead.

(Playing tape)

MR. PARKER: Your Honor, we object to the transcript. First, the first two lines, I don't know about Mr. Moskowitz and Ms. Spain, I can't understand if that is what they say. I believe it is totally inaudible and I can't [1549] understand those are the words.

Secondly, on the second page, after the sixth statement. In other words, between Lisa and "DWL" there is conversation that is omitted from the transcript. Judge Lanier said something about, "You mean you told them no." And she says, "Well, that's what I told them." None of that is here in the transcript and so the transcript is not accurate.

MR. EMMONS: I agree, we just noticed that ourselves. We agree this sentence is left out of the transcript.

THE COURT: Well, I don't see how we can send an inaccurate transcript back there. I think you are entitled to play the tape.

MR. EMMONS: We'll just have to play the tape. We played the other tape. Both tapes are very clear, espe-

cially the first one we played in this machine. They are very clear.

THE COURT: All right. Are we ready for the jury?

MR. EMMONS: Yes, we are ready, Your Honor.

THE COURT: Marshal, will you ask the jury to come out?

(Whereupon, the jury was brought into the courtroom, and the trial of the case continued in the hearing and presence of the jury, as follows:)

[1550] THE COURT: Good morning, ladies and gentlemen. Thank you all for being here on time. Mr. Lanier, would you come around and retake the stand, please.

DAVID W. LANIER,

The said witness, after having been previously sworn, resumed the witness stand and continued testifying, as follows:

MR. EMMONS: Judge, I will remind you that you are still under the oath that you took last week.

THE WITNESS: Yes, sir.

THE COURT: Mr. Emmons?

MR. EMMONS: Yes, sir.

[1551] DIRECT EXAMINATION

BY MR. EMMONS:

Q. Judge, I believe as we concluded Friday you were finishing up your testimony with regard to the witness, Lisa Couch. Is that your recollection?

A. Yes, sir, I believe so.

Q. I want to go back to one other thing. You have heard testimony regarding the meeting that you had with Lisa Couch and her parents with regard to a voluntary change in custody after the indictments had been returned in this matter.

A. Yes, sir.

Q. And you also testified that after that meeting, Lisa Couch asked to see you privately in your office, is that correct?

A. That's correct.

Q. And you heard Ms. Criswell testify about that too?

A. Yes, sir.

Q. And you heard Lisa Couch testify about that?

A. Yes, sir.

Q. Is that testimony correct, did she ask for such a meeting?

A. She asked for it.

Q. And did you go back into your private office with you?

A. Yes, sir.

Q. Leave the door, as has been testified?

[1552] A. Yes, sir.

Q. Cracked. And did you have a conversation back there?

A. We did.

Q. And you heard, of course, some of the statements Ms. Couch said she made to you back there in response to my cross examination, as she testified, did you not?

A. Yes, sir.

Q. I'll ask you if you did in fact tape record that conversation for your own protection? Or did you tape record the conversation?

A. I did tape record the conversation.

Q. And have you brought with you today an accurate copy of that tape and have you listened to it to make sure that it accurately reflects the conversation you had in your chambers that day?

A. Yes, sir.

Q. Would you like to have that played to the jury at this time?

A. Yes, sir.

MR. EMMONS: If the Court please, I would ask that that tape be played to the jury at this time.

(Playing tape)

MR. EMMONS: If The Court Please, I would ask, since it is such a short tape, ask that the jury be allowed to hear that one more time.

[1553] THE WITNESS: I think if you would control the volume a little bit, you could hear it a lot better. That has been my experience.

MR. EMMONS: Could we let the volume down a little bit.

THE WITNESS: In places it gets so loud you can't hear what she is saying. When I listened to it, that is what I had to do, control the volume.

MR. EMMONS: I would ask that the witness be allowed to control the volume.

THE COURT: Yes, sir. Step down and do it. Is the tape rewind?

MR. PARKER: Yes, sir.

THE COURT: Thank you.

(Tape played again)

(Witness resuming seat at witness stand.)

BY MR. EMMONS:

Q. Judge, you heard the testimony of Ms. Couch during the time you went back in her office and you were taping her, that you were again fondling her. Did you hear that?

A. I heard that.

Q. Is that true or false?

A. That is false.

Q. Is there anything I have left out in regard to Ms. Couch's testimony that you need to tell this jury?

[1554] A. Well, of course, I think you can tell from that tape whether or not there was anything going on outside the conversation. The U.S. Attorney and the FBI questioned her shortly after this in Dyersburg, and I think

we had this at another hearing. And they stated that the only thing that she told them about this conversation at that questioning was that she came back into my private office to thank me for doing the consent order for the custody of her child. She did not mention anything about a conversation like this to them within a few days after this happened. To me that indicates that they were—that she was afraid of them not me.

Q. Judge, do you know a lady named Fonda Bandy?

A. Yes, sir.

Q. You have heard her testimony in this courtroom?

A. Yes, sir.

Q. How long have you known Fonda Bandy and what is your recollection of how you met her?

A. I met Fonda Bandy at Bubba Agee's apartment at the Post House. I don't remember exactly when, but I was visiting at his apartment and she was there, and I met her there. She had been decorating his apartment, and she had been going with Bubba Agee. She was still married at the time they were going together, and that is where I met her.

Q. Bubba Agee is a lawyer in Dyersburg, a friend of yours?

[1555] A. Right.

Q. Do you know whether or not he is the one that recommended her for the—I believe he recommended someone else for a job in your office one time, maybe not.

A. I don't know whether he talked to her about this job or not.

Q. Fonda Bandy never applied for a job with you, did she?

A. No, sir.

Q. She said she came to see you in regard to a parenting class that was part of her responsibilities at the Dyersburg Housing, Drug Free Housing Project. Is that the way you recall it?

A. She called me one day and said she would like to talk to me about whatever she does, and I didn't know what she did at the time, and I'm still not sure what she does. But she did call and ask for an appointment and she came to see me one day.

Q. When she got there, did she talk about this parenting class?

A. She did, it was very briefly. She gave me her business card and I think she said she worked through the Dyersburg Housing Authority on some federal grant program where she got paid through a federal grant. But I don't even remember her going into any details about a parenting program or what she does [1556] down there, or anything else. I think that she mentioned that if I had any people through court that would need a parenting skills program, that they could provide that for them. And I had just had one a few days before, and I mentioned that. I told her I would get the attorneys to contact her about it. And I didn't realize until she testified that only people that were residents of the Dyersburg Housing Authority were eligible for her program. So, I really didn't have anybody that was eligible for her program going through my courts.

Q. Did you have any objection to the parenting class, strong feelings for or against it?

A. Well, I was all for it. I think that it is something that is needed. There are a lot of young married couples that need some parenting skills taught to them, and I was all for it, and told her if I could send anybody to her, I would be glad to.

Q. Do you recall getting any more communication from her in regard to that program?

A. No, sir, I don't believe I ever heard from her again about that.

Q. What did she want to talk about when she was in your office, what was your recollection of it?

A. Well, when she came in and gave me her card and sat down, we started talking. And she had been divorced, I [1557] believe. * * *

* * * * *

[1558] Q. How long do you think it took?

A. Fifteen to twenty minutes.

Q. When she was through talking to Mr. Agee, what happened then?

A. When she got through, she said, "Well, thank you. I want to —" You know, she was leaving. And I got up to show her to the door and she came over and hugged me and kissed me when she got ready to leave. And thanked me for calling Bubba, that she really had been wanting to talk to him and she really appreciated me doing that for her.

Q. She seemed to especially happy about that?

A. She just seemed really excited.

Q. Did she say anything to you about Joe Boyd of the District Attorney's office sending her down there to talk about this parenting class?

A. No, sir, she never mentioned Joe Boyd.

Q. When did you find out it was only limited to the people in the Dyersburg Housing Authority?

A. When she testified down here in this trial court.

Q. Do you recall having any further conversations with her about the parenting class?

A. I think I called her office one day and left a message that there were some people that needed a parenting skills program, but I didn't talk to her, so I don't think I have ever talked to her again since then.

* * * * *

[1572] [Mr. Moskowitz:] Q. And you again, in 1990, solemnly swore that you would uphold the laws of the State of the Tennessee and of the Constitution of the United States, isn't that correct?

[Mr. Lanier:] A. Yes, sir.

Q. And that you wouldn't violate those laws, you would uphold them. You would enforce them fairly. You won't use them for a bad purpose, isn't that correct?

A. That's correct.

Q. And I'm sure you would agree, Judge, that it would be a violation of your oath and it would be just plain wrong to take advantage of your power and your position as a judge to assault people who are under your authority and control. Wouldn't you agree with that statement?

A. I would agree if I assaulted anybody, it would be a violation of the law.

Q. All right. Well, I know that you deny the assaults, but I think we need to establish that you would agree that that would be wrong if it had happened.

A. Yes, sir.

* * * * *

TRIAL TRANSCRIPT

(December 16, 1992)

* * * * *

[1861] * * * Ladies and [1862] gentlemen, a reasonable doubt is a real doubt based on reason and common sense after careful and impartial consideration of all the evidence in the case. Proof beyond a reasonable doubt, therefore, is proof to such a convincing character that you would be willing to rely upon and act on it without hesitation in the most important decisions in your own life. If you are convinced that the defendant has been proved guilty beyond a reasonable doubt, say so by returning a verdict of guilty. If you are not convinced to that extent, then say so by returning a verdict of not guilty.

As stated earlier, you must make your decision only on the evidence that was admitted in this case. The term evidence includes the testimony of the witnesses, the exhibits admitted in the record and any facts of which the Court has taken judicial notice. Remember, that anything that the lawyers have said in questions, objections, statements or argument is not evidence in this case. It is your own recollection and interpretation of the evidence that controls. Some of you have heard the terms "direct evidence" and "circumstantial evidence". Direct evidence is the testimony of one who has searched actual knowledge of a fact, such as an eye witness. Circumstantial evidence, on the other hand, is proof of a chain of facts and circumstances indicating or indirectly proving that the defendant is either guilty or not guilty. It is your job to decide how much [1863] weight to give to either type of evidence. The law makes no distinction between the weight that you may give to either direct or circumstantial evidence.

You should consider all the evidence, both direct and circumstantial, and give it whatever weight that you believe it deserves. You should use your common sense in weighing the evidence. Consider it in the light of your

everyday experience with people and events and give it whatever weight you believe it deserves. If your experience tells you that certain evidence reasonably leads to a conclusion, you are free to reach that conclusion.

You should not assume from anything that I may have said or done during the course of this trial that I have any opinion concerning any of the factual issues in this case. Except for my instructions to you, you should disregard anything that I may have said in arriving at your own decision concerning the facts. You are instructed, ladies and gentlemen, that the Court has taken judicial notice of the fact that Dyersburg, Tennessee is located in the Western District of Tennessee. This is merely a shorthand method of receiving evidence on a matter I consider to be so well established that we don't need to hear a witness on that point. Since you are the fact finders in this case, you may but are not required to accept this fact as conclusively established.

[1864] In saying, ladies and gentlemen, that you must consider all the evidence, I do not mean to say that you must accept all the evidence as true or accurate. You should decide whether you believe what each witness had to say and how important that testimony was. In making that decision, you may believe or disbelieve any witness in whole or in part.

The number of witnesses concerning or testifying concerning any particular dispute is not controlling, of course. You may decide that the testimony of a smaller number of witnesses concerning any fact and dispute is more believable than the testimony of a larger number of witnesses to the contrary.

In deciding whether you believe or do not believe any witness, let me suggest that you ask yourself a few questions. Did that person impress you as one who is telling the truth? Did he or she have any particular reason not to tell the truth? Did he or she have a personal interest in the outcome of the case or some bias or prejudice or

reason for testifying that might cause that witness not to tell the truth or to slant his or her testimony? Did the witness seem to have a good memory? Did the witness have the opportunity and the ability to observe accurately the things that he or she testified about? Did that witness appear to understand the questions clearly and to answer those questions [1865] directly? Did the witness's testimony differ from the testimony of other witnesses? You should ask yourself whether there was evidence tending to prove that the witness testified falsely concerning some important fact or whether there was evidence at some other time the witness said or did something or failed to say or do something that was different from the testimony that he or she gave during the course of this trial. Keep in mind, of course, that a simple mistake by a witness does not necessarily mean that that witness was not telling the truth as he or she remembers it. People do naturally tend to forget some things and to remember other things inaccurately. So if a witness has made a misstatement, you need to consider whether that misstatement was simply an innocent lapse of memory or an intentional falsehood. That may depend upon whether it had to do with an important fact or only with an unimportant detail.

Since the defendant did testify, you should decide in the same way as that with any other witness whether you believe the testimony of the defendant. When knowledge of a technical subject matter might be helpful to the jury, a person having special training or experience in that technical field, one would call them an expert witness, is permitted to state his or her opinion concerning those technical matters. Merely because an expert witness has expressed an opinion, however, does not mean that you must [1866] accept that opinion. The same as with any other witness, it is up to you to decide whether to rely upon it.

During the course of this trial, you heard evidence that at times other than the times charged in the various

counts of the indictment in this case, the defendant committed acts similar to the acts charged in the indictment. You may consider such evidence not to prove that the defendant did the acts charged in this case but only to prove the defendant's state of mind. That is, that the defendant acted as charged in this case with the necessary intent. You've also heard evidence with respect to the various acts charged in the different counts in the indictment. To the extent that the acts charged in one count are similar to the acts charged in the other count, you may consider such similar acts only to prove the defendant's state of mind but not to prove that the defendant did the acts charged in the other counts. Therefore, if you find first that the government has proved beyond a reasonable doubt that the defendant did, in fact, commit an act charged in any count of the indictment and secondly, that the defendant also committed similar acts at other times, then you may consider those similar acts in deciding whether the defendant committed the act charged in that count willfully and not due to accident or mistake.

* * * * *

[1873] The indictment in each of these counts, ladies and gentlemen, charges the defendant with having violated a statute of the United States, Section 242, of Title 18 of the United States Code. That statute reads, in pertinent part, "Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any state, territory or district to the deprivation of any rights, privileges or immunities secured or protected by the constitution or laws of the United States, shall be guilty of a crime against the United States." This law was passed by [1874] Congress many years ago in order to carry into effect certain provisions of the Constitution of the United States. The Federal Statutory Provision which I just read in part was designed to insure that no person in the United States would be deprived of

his or her liberty without due process of law by officials acting under color of any law, statute, ordinance, regulation, or custom. It is a protection against encroachment by the state or federal governments and their authorized officials and agents upon the rights of any person under the constitution and laws of the United States. In other words, Congress intended to provide that no agency of government, no official or agent by whom its power is asserted or carried into execution, should willfully deprive any person of rights guaranteed by the constitution and laws of the United States through the use of such governmental powers.

In order to sustain its burden of proof for the crime of willful[] deprivation of a constitutional right under color of law, the government must prove the following four elements beyond a reasonable doubt. First, the person upon whom the alleged acts were committed must have been an inhabitant of the State of Tennessee. Second, the defendant must have been acting under color of law. Third, the conduct of the defendant must have deprived the victim named in each count of a right secured or protected by the constitution or [1875] laws of the United States. And fourth, it must have been an intent on the part of the defendant willfully to subject the victim to the deprivation of the rights described above.

With regard to the first element of the offense, I instruct you that if you find that the victim named in each count was present in the State of Tennessee at the time of the incident charged in the indictment, then she was an inhabitant of the state within the meaning of this statute.

With regard to the second element, the phrase "under color of law" means the real or purported use of authority provided by law. A person acts under color of law when that person acts in his official capacity or claims to act in his official capacity. Acts committed under color of law of the state include not only the actions of officials

within the limits of their lawful authority but also the actions of state officials who exceed the limits of their lawful authority while purporting or claiming to act in performance of their official duties. Misuse of power possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law is an action taken under color of law or under color of state law. The phrase "under color of law", therefore, includes all acts both lawful and unlawful done under the real purported or claimed authority of any state law.

The third element, ladies and gentlemen, to be [1876] proved is that the conduct of the defendant must have deprived the victim of her rights secured or protected by the constitution or laws of the United States. Each count in this indictment charges the defendant deprived the victim named in that count of her right not to be deprived of liberty without due process of law, specifically her right to be free from willful sexual assault. The Fourteenth Amendment to the Constitution guarantees that no person can be deprived of liberty by the government without due process of law. Included in the liberty protected by the Fourteenth Amendment is the concept of personal bodily integrity and the right to be free of unauthorized and unlawful physical abuse by state intrusion. Thus, this protected right of liberty provides that no person shall be subject to physical or bodily abuse without lawful justification by a state official acting or claiming to act under the color of the laws of any state of the United States when that official's conduct is so demeaning and harmful under all the circumstances as to shock one's consci[ence.] Freedom from such physical abuse includes the right to be free from certain sexually motivated physical assaults and coerced sexual battery. It is not, however, every unjustified touching or grabbing by a state official that constitutes a violation of a person's constitutional rights. The physical abuse must be of a serious substantial nature that involves physical force,

mental [1877] coercion, bodily injury or emotional damage which is shocking to one's consci[ence.]

In making this determination, you should consider the nature and the duration of the alleged abuse, the reason or motivation for any physical contact, the context in which the alleged events occurred, intimidation or force, the extent of any injuries and the effect of the defendant's alle[]ged action.

For the physical contact to be unlawful, it must have been unauthorized and not due to the free and voluntary consent of the alleged victim. It is for you to determine whether any such conduct occurred by reason of uncoerced and voluntary consent.

With regard to the fourth element, willfulness, I instruct you that an act is done willfully if it is done voluntarily and intentionally and with the specific intent to do something the law forbids; that is, with bad purpose, to disobey or disregard the law. In the case of the law involved here, it means with specific intent to deprive the victims of liberty without due process of law. With regard to specific intent, you are instructed that intent is a state of mind and can be proved by circumstantial evidence. Indeed, it can rarely be established by any other means. In determ[in]ing whether this element of specific intent was present, you may consider all of the intended circumstances [878] of the case.

I charge you that you may infer that a person ordinarily intends all the natural and probable consequences of an act knowingly done. In other words, you may, in this case, infer and find that the defendant intended all the consequences that a person standing in like circumstances and possessing like knowledge should have expected to result in his or her act or acts knowingly done. It is not necessary to show or prove that the defendant was thinking in constitutional terms at the time of the incident. You may find that the defendant acted with reckless and specific intent, even if you find that he had

no real familiarity with the constitution or with the particular constitutional right involved, provided that you find that the defendant willfully and knowingly did the act which deprived the victims of their constitutional rights. If you find that the defendant knew what he was doing and that he intended to do what he did and if you find that what he did constituted a deprivation of a constitutional right, then you may conclude that the defendant acted with the specific intent to deprive the victims of that constitutional right.

Counts 6, 7, and 10 charge that the defendant's acts resulted in bodily injury to the persons named in those counts. You are instructed that bodily injury means any injury, no matter how temporary. Bodily injury also includes [1879] physical pain as well as any burn, cut, abrasion, bruise, disfigurement, illness or impairment of a bodily function.

It is also not necessary that the defendant intended to cause physical injury to the victims. The government need only prove that acts of the defendant resulted in bodily injury to the victim. With respect to each of these counts, 6, 7 and 10, you must determine that the government has proved beyond a reasonable doubt that bodily injury resulted from the acts charged against the defendant in that count. I have included a specific question as to these counts in the verdict forms which I will explain to you in a moment.

You will note that the indictment charges that the offenses were committed on or about a certain date or in or about certain months. The government does not have to prove with certainty the exact date of the alleged offenses. It is sufficient that the government proves beyond a reasonable doubt that the offense was committed on a date reasonably near the date alleged.

Ladies and gentlemen, a separate crime or offense is charged in each count of the indictment. The number of counts is not evidence of guilt. And this should not influence your decision in any way. Each charge and the

evidence pertaining to that charge should be considered separately. The fact that you may find the defendant guilty [1880] or not guilty as to one of the offenses charged not affect your verdict as to any other offense charged. Let me caution you that as to each charge, you must determine from the evidence in this case whether the defendant is guilty or not guilty. The defendant is only on trial for the specific offenses alle[.]ged in the indictment under 18 United States Code, Section 242. This case, therefore, does not involve state charges of sexual assault and battery.

A question of punishment should not be considered by the jury in any way in deciding the case. If the defendant is convicted, the matter of punishment is for the judge to determine. You are here to determine the guilt or innocence of the defendant from the evidence in this case. You are not called upon to return a verdict as to the guilt or innocence of any other person or persons. You must determine whether the evidence in this case convinces you beyond a reasonable doubt of the guilt of the accused without regard to any belief that you may have about the guilt or innocence of any other person or persons.

* * * * *

[1884] THE COURT: That completes the charge. Are there any objections, deletions, modifications?

MR. MOSKOWITZ: No.

MR. EMMONS: None.

(Whereupon, counsel returned to the counsel table, and the following occurred in the hearing and presence of the jury, as follows:)

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SUPREME COURT OF THE UNITED STATES

No. 95-1717

UNITED STATES, PETITIONER

v.

DAVID W. LANIER

ORDER ALLOWING CERTIORARI

Filed June 17, 1996

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted.

June 17, 1996